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# Federal Register

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

WHEN: Tuesday, December 11, 2007
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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# Rules and Regulations

Federal Register
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Monday, November 26, 2007

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

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

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 558

### New Animal Drugs For Use in Animal Feeds; Florfenicol

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the approval of a supplemental new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The supplemental NADA provides for the use of florfenicol by veterinary feed directive (VFD) for the control of mortality in freshwater-reared salmonids due to furunculosis associated with *Aeromonas salmonicida*.

**DATES:** This rule is effective November 26, 2007.

**FOR FURTHER INFORMATION CONTACT:** Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *joan.gotthardt@fda.gov*.

**SUPPLEMENTARY INFORMATION:** Schering-Plough Animal Health Corp., 556 Morris Ave., Summit, NJ 07901, filed a supplement to NADA 141–246 that provides for use of AQUAFLOR (florfenicol), a Type A medicated article, by VFD to formulate Type C medicated feed for the control of mortality in freshwater-reared salmonids due to furunculosis associated with *Aeromonas salmonicida*. The supplemental application is approved as of October 26, 2007, and the regulations are amended in 21 CFR 558.261 to reflect the approval and a current format.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 573(c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360ccc–2), this supplemental approval qualifies for 7 years of exclusive marketing rights beginning on the date of approval because the new animal drug has been declared a designated new animal drug by FDA under section 573(a) of the act.

The agency has carefully considered the potential environmental impact of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. FDA's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

### List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

■ 2. In § 558.261, revise paragraph (e) to read as follows:

**§ 558.261 Florfenicol.**

* * * * *

(e) *Conditions of use*—

(1) *Swine*—

| Florfenicol in grams/ ton of feed | Indications for use | Limitations |
|---|---|---|
| 182 | For the control of swine respiratory disease (SRD) associated with *Actinobacillus pleuropneumoniae*, *Pasteurella multocida*, *Streptococcus suis*, and *Bordetella bronchiseptica* in groups of swine in buildings experiencing an outbreak of SRD. | Feed continuously as a sole ration for 5 consecutive days. The safety of florfenicol on swine reproductive performance, pregnancy, and lactation have not been determined. Feeds containing florfenicol must be withdrawn 13 days prior to slaughter. |

(2) *Fish*—

| Florfenicol in grams/ ton of feed | Indications for use | Limitations |
|---|---|---|
| (i) 182 to 1,816 | Catfish: For the control of mortality due to enteric septicemia of catfish associated with *Edwardsiella ictaluri*. | Feed as a sole ration for 10 consecutive days to deliver 10 milligrams florfenicol per kilogram of fish. Feed containing florfenicol shall not be fed for more than 10 days. Following administration, fish should be reevaluated by a licensed veterinarian before initiating a further course of therapy. A dose-related decrease in hematopoietic/ lymphopoietic tissue may occur. The time required for hematopoietic/lymphopoietic tissues to regenerate was not evaluated. The effects of florfenicol on reproductive performance have not been determined. Feeds containing florfenicol must be withdrawn 12 days prior to slaughter. |
| (ii) 182 to 1,816 | Freshwater-reared salmonids: For the control of mortality due to coldwater disease associated with *Flavobacterium psychrophilum* and furunculosis associated with *Aeromonas salmonicida*. | Feed as a sole ration for 10 consecutive days to deliver 10 milligrams florfenicol per kilogram of fish. Feed containing florfenicol shall not be fed for more than 10 days. Following administration, fish should be reevaluated by a licensed veterinarian before initiating a further course of therapy. The effects of florfenicol on reproductive performance have not been determined. Feeds containing florfenicol must be withdrawn 15 days prior to slaughter. |

Dated: November 9, 2007.

**Bernadette Dunham,**

*Deputy Director, Center for Veterinary Medicine.*

[FR Doc. E7–22942 Filed 11–23–07; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[CGD01–07–157]**

**RIN 1625–AA00**

## Safety Zone: Ambrose Light, Offshore Sandy Hook, NJ, Atlantic Ocean

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the waters of the Atlantic Ocean within a 250 yard radius of Ambrose Light (LLNR 720) located at position 40°27′00″ N, 073°48′00″ W, approximately 8.35 nautical miles east of Sandy Hook, NJ. This safety zone is necessary to provide for the safety of life, property and the environment on navigable waters of the United States during survey and reconstruction of the Ambrose Light that was recently damaged. This safety zone is intended to keep vessels a safe distance from Ambrose Light during the survey and reconstruction operations.

**DATES:** This rule is effective from 12:01 a.m. on November 5, 2007 through 11:59 p.m. on May 5, 2008.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD01–07–157 and are available for inspection or copying at Coast Guard Sector New York, Room 209, Staten Island, New York 10305 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Mike McBrady, Waterways Management Division, Coast Guard Sector New York (718) 354–2353.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. A notice and comment period was not held for this rulemaking because the safety zone is needed in response to an emergency situation created when the Ambrose Light was struck and damaged by a vessel. A survey and repairs are needed immediately in order to restore the light to normal operations. Delaying the necessary survey and repairs in order to conduct a notice and comment period would be contrary to the public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** as immediate action is needed to protect vessels transiting the area from the hazards of the damaged light tower and from the hazards associated with survey and reconstruction operations. Any delay in implementing this rule would be contrary to public interest since immediate action is needed due to the potential hazards associated with the unstable light, the possibility of it collapsing, or a vessel grounding on the remains of Ambrose Light (LLNR 720).

### Background and Purpose

On Saturday, November 3, 2007, the M/T AXEL SPIRIT allided with Ambrose Light (LLNR 720) in position 40°27′00″ N, 073°48′00″ W approximately 8.35 nautical miles east of Sandy Hook, NJ. Initial damage assessment indicates that the Ambrose Light is no longer watching properly and in danger of collapse, creating an additional hazard to vessels operating in the area. This safety zone is being created in response to this emergency situation in order to keep mariners away from the hazards associated with the damaged structure and from the hazards associated with survey and reconstruction operations.

### Discussion of Rule

This rule will provide for the safety of vessel traffic in and around Ambrose Light (LLNR 720). This regulation establishes a temporary safety zone on the navigable waters of the Atlantic Ocean within a 250-yard radius of position 40°27′00″ N, 073°48′00″ W, approximately 8.35 nautical miles east of Sandy Hook, NJ. The rule described herein prohibits the transit of vessels through the safety zone unless specifically authorized by the Captain of the Port, New York. This safety zone is in effect from 12:01 a.m. on November 5, 2007 until 11:59 p.m. on May 5, 2008. The zone will be enforced during the entire effective period unless the survey and reconstruction work is completed prior to the last effective date. If survey and reconstruction is completed before May 5, 2008, the Coast Guard will cease enforcement of the safety zone.

Marine traffic may transit safely outside of the zone during the enforcement period. The Captain of the Port New York will notify the maritime community of the safety zone by publication in the Local Notice to Mariners, Safety Voice Broadcasts, and on the internet at *http://homeport.uscg.mil/newyork*.

**Regulatory Evaluation**

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

We expect the economic impact of this rule will be so minimal that a full Regulatory is unnecessary. This regulation may have some impact on the public, but the potential impact will be minimized for the following reason: vessels may transit around the 250-yard safety zone.

**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.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit within a 250-yard radius of Ambrose Light (LLNR 720) at 40°27′00″ N, 073°48′00″ W approximately 8.35 nautical miles east of Sandy Hook, NJ. However, this safety zone will not have a significant economic impact on a substantial number of small entities as vessels will be able to transit around the 250-yard safety zone.

**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 rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander M. McBrady, Waterways Management Division, Coast Guard Sector New York (718) 354–2353.

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

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

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T01–157 to read as follows:

**§ 165.T01–157 Safety Zone: Ambrose Light, Offshore Sandy Hook, New Jersey, Atlantic Ocean**

(a) *Location.* The following area is a Safety Zone: All navigable waters of the Atlantic Ocean within a 250-yard radius of Ambrose Light (LLNR 720) at position 40°27′00″ N, 073°48′00″ W, approximately 8.35 nautical miles east of Sandy Hook, NJ.

(b) *Effective Dates.* This regulation is effective from 12:01 a.m. on November 5, 2007 to 11:59 p.m. on May 5, 2008.

(c) *Definitions.* The following definition applies to this section: *On-scene representative*, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port, New York.

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

(2) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, New York, or his on-scene representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's on-scene representative on VHF Channel 16 (156.8 MHz) to seek permission to do so. If permission is granted, vessel operators must comply with all directions given to them by the COTP or the COTP's on-scene representative.

Dated: November 6, 2007.

**R.R. O'Brien,**

*Captain, U.S. Coast Guard, Commander, Coast Guard Sector New York.*

[FR Doc. E7–22960 Filed 11–23–07; 8:45 am]

**BILLING CODE 4910–15–P**

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

### 7 CFR Part 786

**RIN 0560–AH74**

## Dairy Disaster Assistance Payment Program III

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes a new program, the Dairy Disaster Assistance Payment Program III, as authorized by the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007. The proposed program would provide $16 million in assistance for producers in counties designated as a major disaster or emergency area by the President, or those declared a natural disaster area by the Secretary of Agriculture. Counties declared disasters by the President may be eligible, even though agricultural loss was not covered by the declaration, if there has been a Farm Service Agency Administrator's Physical Loss Notice covering such losses. The natural disaster declarations by the Secretary or the President must have been issued between January 1, 2005 and February 28, 2007, that is, after January 1, 2005, and before February 28, 2007. Counties contiguous to such counties will also be eligible. This proposed program is designed to provide financial assistance to producers who suffered dairy production losses due to natural disasters in the eligible counties.

**DATES:** We will consider comments that we receive by December 26, 2007.

**ADDRESSES:** We invite you to submit comments on this proposed rule. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- E-Mail: *Danielle.Cooke@wdc.usda.gov.*
- Fax: (202) 690–1536.
- Mail: Grady Bilberry, Director, Price Support Division (PSD), Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0512, Room 4095–S, 1400 Independence Avenue, SW., Washington, DC 20250–0512.
- Hand Delivery or Courier: Deliver comments to the above address.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Comments may be inspected in the Office of the Director, PSD, FSA, USDA, Room 4095 South Building, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this proposed rule is available through the FSA home page at *http://www.fsa.usda.gov/*.

**FOR FURTHER INFORMATION CONTACT:** Danielle Cooke, telephone: (202) 720–1919; e-mail: *Danielle.Cooke@wdc.usda.gov*.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 9007 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28), enacted May 25, 2007, provides the Secretary of Agriculture with $16 million to make payments to dairy producers for losses in counties declared or designated a natural disaster during the period of January 2, 2005 through February 27, 2007, by the President or Secretary of Agriculture. For timely Presidential declarations that do not cover agricultural loss, the subject counties may still be covered if the county was the subject of a Farm Service Agency (FSA) Administrator's Loss Notice. Counties contiguous to such declared counties are also eligible. Each of these counties is referred to as a disaster county in this document. The period from January 2, 2005 through February 27, 2007, is referred to as the eligible period.

Since 2005 dairy production in many counties throughout the United States has been severely impacted by widespread and significant destruction caused by various natural disasters such as hurricanes, wildfires, ice storms, heavy rainfalls, floods, and severe blizzard conditions. As a result, many dairy producers may have incurred decreases in production due to cattle losses and milk that had to be dumped because of closed milk plants and damaged containment equipment caused by the widespread destruction by the natural disasters. Also, the loss of electricity, the shortage of fuel, and infrastructure damage temporarily interrupted the flow of dairy products to markets.

The proposed regulations for the new program would allow dairy producers who suffered production losses, for which relief has not been previously provided, that are the result of natural disasters declared during the eligible period to apply for compensation for losses incurred during that period. This rule would offset a portion of the per-pound losses dairy producers have incurred commercially marketing milk in the United States.

Benefits would be provided to eligible dairy producers in those disaster counties who meet all program eligibility requirements, and are subsequently approved for participation in the Dairy Disaster Assistance Payment Program III (DDAP–III). This program is similar to previous programs: The 2004 program (DDAP–I) and 2005 program (DDAP–II). Dairy producers in counties contiguous to a directly eligible county are also eligible for DDAP–III benefits. Eligible dairy producers would receive payments to help pay operating expenses and meet other financial obligations.

To be eligible under the proposed program, dairy producers must have produced milk in the United States any time during the eligible period as part of a dairy operation located in an eligible disaster county. Production losses suffered by the dairy operation must have occurred during the specified eligibility period and must have been as a result of the disaster declaration specific to the county in which the dairy operation is located. FSA may, as appropriate, make adjustments to calculated production losses not resulting from the applicable disaster specified in the declaration for an eligible disaster county. Production losses incurred in each authorized program year, during the eligible period specified, are eligible for benefits, if a disaster declaration was issued for a county for such program year and no

previous disaster payment has been made.

A dairy producer must provide the number of cows in the operation's dairy herd for each month of the calendar year in which a disaster declaration was issued to determine the average number of cows in the dairy herd for the operation per applicable year. In addition, adequate evidence of dairy production losses must be provided to FSA to substantiate the losses suffered and certified by each producer. Payments would be made according to a formula, which would estimate expected production based on herd size, and would be subject to funding and other limitations. Subject to comment and further consideration, payments would not be reduced as a result of payments from a milk buyer or marketing cooperative for dumped or spoiled milk.

Applicants must apply for benefits during the sign-up period announced by the Deputy Administrator for Farm Programs. FSA expects to announce the sign-up period following the publication of this proposed rule. At the close of the sign-up period, the total production losses from all eligible applicants would be determined. Payment eligibilities would be separately calculated on an operation by operation basis. An individual may be involved in more than one operation.

Payments to eligible producers would be calculated by multiplying the eligible pounds by the average price received for commercial milk production in the affected areas during the calendar year specific to the disaster for 2005 and 2006, and for the months of January and February during calendar year 2007 for 2007 claims. A producer may have a claim for more than one year; however, a deduction would be made for payments made under DDAP–II or other disaster programs.

If the total amount of available funding ($16 million, less any reserve established to account for disputed claims) is insufficient to compensate eligible producers for eligible losses, then FSA would, under this proposal, pay losses at two levels in an effort to more equitably distribute the limited funds and maximize the effectiveness of the program.

Specifically, in the case of inadequate funds for all eligible losses, FSA would calculate each operation's overall annual percentage reduction for each full disaster claim period that corresponds with the applicable declared disaster from the calculated base year production for the operation for the calendar year of the declared disaster, or first two months of 2007 for disasters in 2007. The disaster claim period applicable to: (1) Disaster declarations for calendar year 2005 are all months contained in the 2005 calendar year; (2) disaster declarations for calendar year 2006, are all months contained in the 2006 calendar year, and (3) disaster declarations for 2007, the first two months of the year only. Again, losses would only be covered for operations in counties with timely disaster declarations as set out in the proposed regulation and above.

Annual base year production for each dairy operation would be computed based on annual data obtained from the National Agricultural Statistics Service of milk production per cow for each applicable State in which the disaster county is located.

If a reduced payment is needed due to funding constraints, calculated losses over the applicable disaster claim period greater than 20-percent of a producer's normal production would be paid at the maximum per-pound payment rate. Payments for eligible losses below the 20-percent threshold would be made at a rate not to exceed the maximum rate for other losses that would exhaust the available funds that remain following payment of eligible losses at the higher level.

FSA proposes to establish the minimum loss level for the priority at 20 percent for DDAP–III in order to be consistent with other disaster programs. For example, the 20-percent threshold mirrors that of DDAP–I and DDAP–II.

Different payments for differing degrees of losses would distribute the limited funds provided under this program in a manner that provides greater assistance to producers who suffered greater losses from the subject disasters. An example of how the apportionment might affect producers is set out in the following table. If funds are adequate for all eligible losses, all eligible producers would be paid at the ''maximum rate,'' which amounts to the average price, as determined under the proposed regulation, received for commercial milk production in their area during the disaster claim period applicable to the declared disaster. FSA encourages comments on these provisions and the appropriate loss-level percentage.

Apportionment example:

| | Producer A (Louisiana 2005 losses) | Producer B (California 2005 losses) | Producer C (Kansas 2006 losses) | Producer D (Georgia 2006 losses) |
|---|---|---|---|---|
| Total Estimated Base Production | 620,000 | 11,339,500 | 1,046,000 | 1,367,550 |
| Actual Production | 485,000 | 10,000,000 | 600,000 | 1,100,000 |
| Total Eligible Loss | 135,000 | 1,339,500 | 446,000 | 267,550 |
| 20% of Base Production | 124,000 | 2,267,900 | 209,000 | 273,510 |
| Pounds of loss above 20% loss level | 11,000 | 0 | 237,000 | 0 |
| Payment Rate | $0.1596/lb. | $0.1388/lb. | $0.1214/lb. | $0.1443/lb. |
| DDAP–III for loss above 20% | $1,756 | $0 | $28,772 | $0 |
| DDAP–III for under 20% loss @ $0. 05/lb. (example only) | $6,200 | $113,395 | $10,450 | $13,676 |
| Total DDAP–III | $7,956 | $113,395 | $39,222 | $13,676 |
| Eligible Losses × average price | $21,546 | $185,923 | $54,144 | $38,608 |
| Percent production loss suffered | 22 | 12 | 43 | 20 |
| Percent financial losses recovered from DDAP–III | 37 | 61 | 72 | 35 |

Gross revenue and per-person payment limits do not apply. However, consistent with other FSA disaster programs, the total assistance provided to a participant for a disaster year under DDAP–III, plus the value of the production that was not lost, may not exceed 95 percent of the value of the production in the absence of a loss, as estimated by the Secretary.

Information provided on applications and supporting documentation will, under the proposal, be subject to verification by FSA. False certifications by producers carry strict penalties and

FSA will validate applications with random spot-checks. Dairy producers determined to have made any false certifications or adopted any misrepresentation, scheme, or device that defeats the program's purpose will be required to refund any payments issued under this program with interest, and may be subject to other civil, criminal, or administrative remedies.

During the application period, dairy producers may apply in person at FSA county offices during regular business hours. Applications may also be submitted to FSA by mail or FAX. Program applications may be obtained in person, by mail, telephone, and facsimile from producers' designated FSA county office or via the Internet at *http://www.fsa.usda.gov*.

**Differences Between DDAP–II and DDAP–III**

DDAP–III would provide payments related to dairy production losses, as required by the legislation. DDAP–II was required to provide payments related to both dairy production losses and spoilage losses. As proposed, DDAP–III would basically follow regulations for DDAP–II, but it was determined that only production losses would be covered. Spoilage losses, in accordance with the legislation, will not be covered by DDAP–III.

DDAP–III applies to dairy producers who suffered dairy production losses in disaster counties during natural disasters declarations issued during the eligible period. DDAP–II applied to producers who suffered dairy losses in hurricane affected counties during 2005, which included a county included in the geographic area covered by a natural disaster declaration related to Hurricane Katrina, Hurricane Ophelia, Hurricane Rita, Hurricane Wilma, or a related condition. The new program has a greater coverage in time and in counties. Provisions would, however, avoid double payment under DDAP–II and DDAP–III. Both DDAP–II and DDAP–III include contiguous counties.

The regulations describe DDAP–III, addressing applications, eligibility, verification of information, payment information, appeals, conditions causing ineligibility, recordkeeping requirements, and refund requirements. In addition the DDAP–III regulations include a section on the termination of the program.

**Notice and Comment**

In order to expedite the availability of funds it has been determined to be in the public interest to limit the comment period to 30 days.

**Executive Order 12866**

This proposed rule has been determined to be significant under Executive Order 12866 and was reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment of this rule was completed and is available from Ms. Cooke using the contact information above.

**Summary of Economic Impacts**

Program payments will provide eligible producers funds to help pay operating expenses and meet other financial obligations. Program payments are expected to total and increase both Federal outlays and aggregate farm revenue by $16 million. This assistance will help dairy producers affected by natural disasters to recover some lost income and additional repair expenses to aid in continuing their agricultural production businesses.

The States with the largest expected claims are: Idaho (33 percent), California (16 percent), New Mexico (13 percent), Indiana and Michigan (7–8 percent), Washington and Arizona (5 percent), and Wisconsin (3 percent). Expected claims totaled 3.1 million hundred weight (cwt).

The average payment rate will be determined by dividing the $16 million available funding by the total milk pounds eligible for payment. The resulting payment rate is projected to be $5.15 per cwt., substantially below average mailbox prices.[1] The average mailbox price for all Federal Orders in the United States was $12.87 in 2006 and $11.28 in California, which is outside the Federal Order system. The lowest mailbox price in the Federal Order system in 2006 was $11.13 in New Mexico.

Producers who can demonstrate a loss exceeding 20 percent of their production will receive compensation equal to the average mailbox price prevailing in their region during the period of the disaster. To the extent that payments equal to the mailbox price are made to some producers, the otherwise-average payment rate of $5.15 will be reduced. In theory, it is possible that enough producers could claim a 20-percent-or-greater loss and receive payments equal to the mailbox price, that payments to the remaining producers with lower losses could be considerably less than $5.15. However, FSA does not have sufficient data to estimate how many producers might have losses exceeding 20 percent of their production, or how much milk such losses might represent.

Payments are expected to increase producer income and defray repair and cattle replacement costs. Outlays will be monitored to ensure that they do not exceed the actual loss.

The $16 million is a small share of federal farm assistance. For example, CCC made $15.3 billion in direct cash payments to farmers and ranchers in fiscal 2005, excluding all payments made for disasters, with the largest category of payments being $8 billion paid under the Direct and Counter Cyclical Program. CCC direct cash payments for fiscal 2005 through estimated fiscal 2007 total $43.7 billion, averaging $14.6 billion, annually.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this rule because FSA is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject of this rule.

**Environmental Assessment**

FSA has determined that this proposed rule does not constitute a major State or Federal action that would significantly affect the human or natural environment consistent with the National Environmental Policy Act 40 CFR 1502.4, Major Federal actions requiring the preparation of Environmental Impact Statements, and 7 CFR Part 799: Environmental Quality and Related Environmental Concerns—Compliance with NEPA implementing the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508. Therefore no environmental assessment or environmental impact statement will be prepared.

**Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12998. This rule would preempt State laws to the extent such laws are inconsistent with it. This rule would not be retroactive. Before judicial action may be brought concerning this rule, all administrative remedies set forth at 7 CFR Parts 11 and 780 must be exhausted.

**Executive Order 12372**

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

[1] The mailbox price is the net price producers receive for their milk, after all marketing costs, discounts, and premiums are accounted for. The Agricultural Marketing Service collects and publishes monthly mailbox prices.

**Unfunded Mandates**

Although we are publishing this as a proposed rule, Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because FSA is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject of this rule. Further, this rule contains no unfunded mandates as defined in sections 202 and 205 of UMRA.

**Paperwork Reduction Act of 1995**

In accordance with the Paperwork Reduction Act of 1995, FSA is submitting a request for approval to the Office of Management and Budget (OMB) of an information collection required to support this proposed rule for the DDAP–III. A notice was published in the **Federal Register** on August 23, 2007 (72 FR 48254) with estimates of the information collection burden required to implement this program and a request for comments on those requirements as required by 5 CFR 1320.8(d)(1). No comments were received. The notice referred to the program as the 2005–2006 Dairy Disaster Assistance Payment program. The program was subsequently renamed DDAP–III. The information Collection is described below:

*Title:* 2005–2006 Dairy Disaster Assistance Payment Program.

*OMB Control Number:* 0560–0252.

*Type of Request:* Revision of a currently approved collection.

*Abstract:* Dairy operations are eligible to receive direct payments provided they make certifications that attest to their eligibility to receive such payments. As appropriate, these operations must certify and identify:

(1) That the dairy operation is physically located in a county declared a natural disaster after January 1, 2005 and before February 28, 2007 (that is the period of January 2, 2005 through February 27, 2007);

(2) The identity of actual persons associated with that operation during that period;

(3) The pounds of dairy production losses incurred as a result of the declared natural disaster;

(4) The number of cows in the dairy operation during the calendar year applicable to the disaster declaration;

(5) That they understand the dairy operation must provide adequate proof of annual milk production commercially marketed by all persons in the dairy operation during the period specified by the FSA to determine the total pounds of eligible losses incurred by the operation.

The information collection is used by FSA to determine the program eligibility of the dairy operations. FSA considers the information collected essential to prudent eligibility determinations and payment calculations. The revision on the information collection covers only the dairy production losses this time, and the number of respondents increases in this information collection. Additionally, without accurate information on dairy operations, the national payment rate would be inaccurate, resulting in payments being made to ineligible recipients, and the integrity and accuracy of the program could be compromised.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 15 minutes (0.25 hour) per response. The average travel time, which is included in the total annual burden, is estimated to be 1 hour per respondent. Approximately 37 percent of respondents (14,750) are expected to choose to submit the form on-line. Therefore, the burden estimate includes travel time for 25,250 respondents.

*Respondents:* Dairy Operations.

*Estimated Number of Respondents:* 40,000.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 35,250 hours.

**E-Government Act Compliance**

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. The forms, regulations, and other information collection activities required to be utilized by a person subject to this rule are available at *http://www.fsa.usda.gov.* Applications may be submitted at the FSA county offices.

**List of Subjects in 7 CFR Part 786**

Dairy products, Disaster assistance, Fraud, Penalties, Price support programs, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR part 786 is proposed to be added to read as follows:

## PART 786—DAIRY DISASTER ASSISTANCE PAYMENT PROGRAM III (DDAP–III)

Sec.



**Authority:** Pub. L. 110–28, 121 Stat. 112.

## PART 786—DAIRY DISASTER ASSISTANCE PAYMENT PROGRAM III (DDAP–III)

### § 786.100 Applicability.

(a) Subject to the availability of funds, this part specifies the terms and conditions applicable to the Dairy Disaster Assistance Payment Program (DDAP–III) authorized by section 9007 of Public Law 110–28. Benefits are available to eligible United States producers who have suffered dairy production losses in eligible counties as a result of a natural disaster declared during the period between January 1, 2005, and February 28, 2007, (that is, after January 1, 2005, and before February 28, 2007).

(b) To be eligible for this program, a producer must have been a milk producer anytime during the period of January 2, 2005, through February 27, 2007, in a county declared a natural disaster by the Secretary of Agriculture, declared a major disaster or emergency designated by the President of the United States. For a county for which there was a timely Presidential declaration, but the declaration did not cover the loss, the county may still be eligible if the county is one for which an appropriate determination of a Farm Service Agency (FSA) Administrator's Physical Loss Notice applies. Counties contiguous to a county that is directly eligible by way of a natural disaster declaration are also eligible. Only losses occurring in eligible counties are eligible for payment in this program.

(c) Subject to the availability of funds, FSA will provide benefits to eligible dairy producers. Additional terms and conditions may be specified in the payment application that must be completed and submitted by producers to receive a disaster assistance payment for dairy production losses.

(d) To be eligible for payments, producers must meet the provisions of, and their losses must meet the conditions of, this part and any other conditions imposed by FSA.

**§ 786.101 Administration.**

(a) DDAP–III will be administered under the general supervision of the Administrator, FSA, or a designee, and be carried out in the field by FSA State and county committees (State and county committees) and FSA employees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee will take any action required by the regulations of this part that has not been taken by the county committee. The State committee will also:

(1) Correct, or require the county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this part; and

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this part.

(d) No provision of delegation in this part to a State or county committee will preclude the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines in cases where lateness or failure to meet such requirements do not adversely affect the operation of the DDAP–III and does not violate statutory limitations of the program.

(f) Data furnished by the applicants is used to determine eligibility for program benefits. Although participation in DDAP–III is voluntary, program benefits will not be provided unless the producer furnishes all requested data.

**§ 786.102 Definitions.**

The definitions in 7 CFR part 718 apply to this part except to the extent they are inconsistent with the provisions of this part. In addition, for the purpose of this part, the following definitions apply.

*Administrator* means the FSA Administrator, or a designee.

*Application* means DDAP–III application.

*Application period* means the time period established by the Deputy Administrator for producers to apply for program benefits.

*Base year production* means the applicable National Agriculture Statistics Service (NASS) average of milk produced per cow for a dairy operation in the applicable State of the eligible disaster county during the period assigned in § 786.104(g), or other measure approved by the Administrator if a suitable NASS average is not available.

*Claim period* means, as assigned in this part, the qualifying months during the period of January 2, 2005 through February 27, 2007, following the base month, during which the loss occurred.

*County committee* means the FSA county committee.

*County office* means the FSA office responsible for administering FSA programs for farms located in a specific area in a State.

*Dairy operation* means any person or group of persons who, as a single unit, as determined by FSA, produces and markets milk commercially from cows and whose production facilities are located in the United States.

*Department* or *USDA* means the United States Department of Agriculture.

*Deputy Administrator* means the Deputy Administrator for Farm Programs (DAFP), FSA, or a designee.

*Disaster county* means a county included in the geographic area covered by a natural disaster declaration, and any county contiguous to a county that qualifies by a natural disaster declaration.

*Farm Service Agency* or *FSA* means the Farm Service Agency of the Department.

*Hundredweight* or *cwt.* means 100 pounds.

*Milk handler* or *cooperative* means the marketing agency to, or through, which the producer commercially markets whole milk.

*Milk marketings* means a marketing of milk for which there is a verifiable sale or delivery record of milk marketed for commercial use.

*Natural disaster declaration* means a natural disaster declaration issued by the Secretary of Agriculture after January 1, 2005, but before February 28, 2007, under section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(a)), a major disaster or emergency designation by the President of the United States in that period under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or a determination of a Farm Service Agency Administrator's Physical Loss Notice for a county covered in an otherwise eligible Presidential declaration.

*Payment pounds* means the pounds of milk production from a dairy operation for which the dairy producer is eligible to be paid under this part.

*Producer* means any individual, group of individuals, partnership, corporation, estate, trust association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen of, or a legal resident alien in, the United States, and who directly or indirectly, as determined by the Secretary, shares in the risk of producing milk, and makes contributions (including land, labor, management, equipment, or capital) to the dairy farming operation of the individual or entity.

*Reliable production evidence* means satisfactory records provided by the producer that are used to substantiate the amount of production reported when verifiable records are not available; the records may include copies of receipts, ledgers of income, income statements of deposit slips, register tapes, and records to verify production costs, contemporaneous measurements, and contemporaneous diaries that are determined acceptable by the county committee.

*Verifiable production records* means evidence that is used to substantiate the amount of production marketed, including any dumped production, and that can be verified by FSA through an independent source.

**§ 786.103 Time and method of application.**

(a) Dairy producers may obtain an application, in person, by mail, by telephone, or by facsimile from any FSA county office. In addition, applicants may download a copy of the application at *http://www.sc.egov.usda.gov.*

(b) A request for benefits under this part must be submitted on a completed DDAP–III application. Applications and any other supporting documentation must be submitted to the FSA county office serving the county where the dairy operation is located, but, in any case, must be received by the FSA county office by the close of business on the date established by the Deputy Administrator. Applications not received by the close of business on such date will be disapproved as not having been timely filed and the dairy producer will not be eligible for benefits under this program.

(c) All persons who share in the risk of a dairy operation's total production must certify to the information on the application before the application will be considered complete.

(d) Each dairy producer requesting benefits under this part must certify to the accuracy and truthfulness of the information provided in their application and any supporting documentation. All information provided is subject to verification by

FSA. Refusal to allow FSA or any other agency of the Department of Agriculture to verify any information provided may result in a denial of eligibility. Furnishing the information is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government may be punishable by imprisonment, fines, and other penalties or sanctions.

**§ 786.104 Eligibility.**

(a) Producers in the United States will be eligible to receive dairy disaster benefits under this part only if they have suffered dairy production losses, previously uncompensated by disaster payments including any previous dairy disaster payment program, during the claim period applicable to a natural disaster declaration in a disaster county. To be eligible to receive payments under this part, producers in a dairy operation must:

(1) Have produced and commercially marketed milk in the United States and commercially marketed the milk produced anytime during the period of January 2, 2005 through February 27, 2007;

(2) Be a producer on a dairy farm operation physically located in an eligible county where dairy production losses were incurred as a result of a disaster for which an applicable natural disaster declaration was issued between January 1, 2005 and February 28, 2007, and limit their claims to losses that occurred in those counties, specific to conditions resulting from the declared disaster as described in the natural disaster declaration;

(3) Provide adequate proof, to the satisfaction of the FSA county committee, of monthly milk production commercially marketed by all persons in the eligible dairy operation during the applicable milk marketing calendar year and claim period that corresponds with the issuance date of the applicable natural disaster declaration, or other period as determined by FSA, to determine the total pounds of eligible losses that will be used for payment; and

(4) Apply for payments during the application period established by the Deputy Administrator.

(b) Payments may be made for losses suffered by an otherwise eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer or the producer's estate signs the application for payment. Proof of authority to sign for the deceased producer's estate or a dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly-authorized representatives must sign the application for payment.

(c) Producers associated with a dairy operation must submit a timely application and satisfy the terms and conditions of this part, instructions issued by FSA, and instructions contained in the application to be eligible for benefits under this part.

(d) As a condition to receive benefits under this part, a producer must have been in compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of 7 CFR part 12 for the calendar year applicable to the natural disaster declaration and loss claim period, and must not otherwise be barred from receiving benefits under 7 CFR part 12 or any other law or regulation.

(e) Payments are limited to losses in eligible counties, in eligible months.

(f) All payments under this part are subject to the availability of funds.

(g) Eligible losses are determined from the applicable base year production (see definition in § 786.102) that corresponds to the natural disaster declaration and must have occurred during that same period as follows:

(1) For disaster declarations for disasters during calendar year 2005, the base period and the corresponding claim period are the 2005 calendar year months of January through December;

(2) For disaster declarations issued for disasters during calendar year 2006, the base period and corresponding claim period are the 2006 calendar year months of January through December; and

(3) For disaster declarations issued for disasters in January and February of 2007, the base period and corresponding claim period are the 2007 calendar year months of January and February.

(h) Deductions in eligibility will be made for any disaster payments previously received for the loss including any made under a previous dairy disaster assistance payment program for 2005.

**§ 786.105 Proof of production.**

(a) Evidence of production is required to establish the commercial marketing and production history of the dairy operation so that dairy production losses can be computed in accordance with § 786.106.

(b) A dairy producer must, based on the instructions issued by the Deputy Administrator, provide adequate proof of the dairy operation's commercial production, including any dairy herd inventory records for the operation, for each month of the applicable base period and claim period that corresponds with the issuance date of the applicable natural disaster declaration.

(1) A producer must certify and provide such proof as requested that losses for which compensation is claimed were related to the disaster declaration issued and occurred in an eligible county during the eligible claim period.

(2) Additional supporting documentation may be requested by FSA as necessary to verify production losses to the satisfaction of FSA.

(c) Adequate proof of production history of the dairy operation under paragraph (b) of this section must be based on milk marketing statements obtained from the dairy operation's milk handler or marketing cooperative. Supporting documents may include, but are not limited to: Tank records, milk handler records, daily milk marketings, copies of any payments received from other sources for production losses, or any other documents available to confirm or adjust the production history losses incurred by the dairy operation. All information provided is subject to verification, spot check, and audit by FSA.

(d) As specified in § 786.106, loss calculations will be based on comparing the expected base production using herd figures and NASS yield data consistent with this part and the actual production. Such calculations are subject to adjustments as may be appropriate such as a correction for losses not due to the disaster. If adequate proof of normally marketed production and any other production for relevant periods is not presented to the satisfaction of FSA, the request for benefits will be rejected. Special adjustments for new producers may be made as determined necessary by the Administrator.

**§ 786.106 Determination of losses incurred.**

(a) Eligible payable losses are calculated on a dairy operation by dairy operation basis and are limited to those occurring during the applicable claim period, as provided by § 786.104(g), that corresponds with the applicable natural disaster declaration. Specifically, dairy production losses incurred by producers under this part are determined on the established history of the dairy operation's actual commercial production marketed during the applicable claim period that corresponds with the applicable natural disaster declaration, as provided by the dairy operation consistent with § 786.105. Except as otherwise provided

in this part, the base year production, as defined in § 786.102 and established in § 786.104(g) is determined based on the number of cows in a dairy operations herd during the relevant period and data obtained from NASS for milk production per cow during the relevant period for the State in which the eligible disaster county is geographically located.

(b) The eligible dairy production losses for a dairy operation for each of the authorized claim periods will be:

(1) The relevant periods' base year production for the dairy operation calculated under paragraph (a) of this section less,

(2) For each such claim period for each dairy operation the actual commercially-marketed production relevant to that period.

(c) Spoiled or dumped milk must be counted as production for the relevant claim period. Actual production losses may be adjusted to the extent the reduction in production is not certified by the producer to be the result of the disaster identified in the natural disaster declaration or is determined by FSA not to be related to the natural disaster identified in the natural disaster declaration. FSA county committees will determine production losses that are not caused by the disaster associated with the natural disaster declaration. The calculated production loss determined in § 786.106(b) will be adjusted to account for production losses determined by the county committee to not have been associated with the declared natural disaster for an eligible disaster county. The production adjustment may be calculated on a monthly basis according to the number of cows in the dairy operation's dairy herd during the applicable month or months determined to be ineligible to generate claims for benefits, multiplied by the milk produced per cow for the month as determined from monthly data obtained from NASS, as available. If monthly NASS data is unavailable for the State in which the eligible disaster county is located, an alternative method of determining the expected milk produced per cow for that State may be established by the Deputy Administrator. Other appropriate adjustments will be made on such basis as the Deputy Administrator finds to be consistent with the objectives of the program.

(d) Actual production, as adjusted, that exceeds the base year production will mean that the dairy operation incurred no eligible production losses for the corresponding claim period as a result of the natural disaster.

(e) Eligible production losses as otherwise determined under paragraphs (a) through (d) of this section for each authorized year of the program are added together to determine total eligible losses incurred by the dairy operation under DDAP–III subject to all other eligibility requirements as may be included in this part or elsewhere, including the deduction for previous payments including those made under a previous DDAP program.

(f) Payment on eligible dairy operation losses will be calculated using whole pounds of milk. No double counting is permitted, and only one payment will be made for each pound of milk calculated as an eligible loss after the distribution of the operation's eligible production loss among the producers of the dairy operation according to § 786.107(b). Payments under this part will not be affected by any payments for dumped or spoiled milk that the dairy operation may have received from its milk handler, marketing cooperative, or any other private party; however, produced milk that was dumped or spoiled will still count as production.

**§ 786.107 Rate of payment and limitations on funding.**

(a) Subject to the availability of funds, the payment rate for eligible production losses determined according to § 786.106 is, depending on the State, the annual average Mailbox milk price for the Marketing Order, applicable to the State where the eligible disaster county is located, as reported by the Agricultural Marketing Service during the relevant period. States not regulated under a Marketing Order will be assigned a payment rate based on contiguous or nearby State's mailbox price. Maximum per pound payment rates for eligible losses for dairy operations located in specific states during the relevant period are as follows:

| State | Mailbox price 2005 | Mailbox price 2006 | Mailbox price Jan–Feb 2007 |
|---|---|---|---|
| Alabama | 0.1596 | 0.1443 | 0.1615 |
| Alaska | 0.2040 | 0.2010 | 0.0000 |
| Arizona | 0.1388 | 0.1128 | 0.1282 |
| Arkansas | 0.1596 | 0.1443 | 0.1615 |
| California | 0.1388 | 0.1128 | 0.1282 |
| Connecticut | 0.1539 | 0.1344 | 0.1538 |
| Delaware | 0.1539 | 0.1344 | 0.1538 |
| Florida | 0.1758 | 0.1603 | 0.1739 |
| Georgia | 0.1596 | 0.1443 | 0.1615 |
| Idaho | 0.1402 | 0.1215 | 0.1388 |
| Illinois | 0.1514 | 0.1283 | 0.1476 |
| Indiana | 0.1503 | 0.1294 | 0.1460 |
| Iowa | 0.1507 | 0.1285 | 0.1479 |
| Kansas | 0.1403 | 0.1214 | 0.1407 |
| Kentucky | 0.1527 | 0.1349 | 0.1545 |
| Louisiana | 0.1596 | 0.1443 | 0.1615 |
| Maine | 0.1539 | 0.1344 | 0.1538 |
| Maryland | 0.1539 | 0.1344 | 0.1538 |
| Massachusetts | 0.1539 | 0.1344 | 0.1538 |
| Michigan | 0.1478 | 0.1264 | 0.1438 |
| Minnesota | 0.1512 | 0.1277 | 0.1502 |
| Mississippi | 0.1596 | 0.1443 | 0.1615 |
| Missouri (Northern) | 0.1403 | 0.1214 | 0.1407 |
| Missouri (Southern) | 0.1467 | 0.1254 | 0.1445 |
| Montana | 0.1512 | 0.1277 | 0.1502 |
| Nebraska | 0.1403 | 0.1214 | 0.1407 |
| Nevada | 0.1388 | 0.1128 | 0.1282 |
| New Hampshire | 0.1539 | 0.1344 | 0.1538 |

| State | Mailbox price 2005 | Mailbox price 2006 | Mailbox price Jan–Feb 2007 |
|---|---|---|---|
| New Jersey | 0.1539 | 0.1344 | 0.1538 |
| New Mexico | 0.1323 | 0.1108 | 0.1324 |
| New York | 0.1539 | 0.1303 | 0.1489 |
| North Carolina | 0.1527 | 0.1349 | 0.1545 |
| North Dakota | 0.1512 | 0.1277 | 0.1502 |
| Ohio | 0.1506 | 0.1302 | 0.1496 |
| Oregon | 0.1402 | 0.1215 | 0.1388 |
| Pennsylvania (Eastern) | 0.1539 | 0.1340 | 0.1538 |
| Pennsylvania (Western) | 0.1539 | 0.1302 | 0.1487 |
| Puerto Rico | 0.2550 | 0.2570 | 0.0000 |
| Rhode Island | 0.1539 | 0.1344 | 0.1538 |
| South Carolina | 0.1527 | 0.1349 | 0.1545 |
| South Dakota | 0.1512 | 0.1277 | 0.1502 |
| Tennessee | 0.1527 | 0.1349 | 0.1545 |
| Texas | 0.1405 | 0.1194 | 0.1398 |
| Vermont | 0.1539 | 0.1344 | 0.1538 |
| Virginia | 0.1527 | 0.1349 | 0.1545 |
| Washington | 0.1402 | 0.1215 | 0.1388 |
| West Virginia | 0.1506 | 0.1302 | 0.1496 |
| Wisconsin | 0.1535 | 0.1305 | 0.1505 |

**Note:** Calculations are rounded to 7 decimal places.

(b) Subject to the availability of funds, each eligible dairy operation's payment is calculated by multiplying the applicable payment rate under paragraph (a) of this section by the operation's total eligible losses as adjusted pursuant to this part. Where there are multiple producers in the dairy operation, individual producers' payments are disbursed according to each producer's share of the dairy operation's production as specified in the application.

(c) If the total value of losses claimed nationwide under paragraph (b) of this section exceeds the $16 million available for the DDAP-III, less any reserve that may be created under paragraph (e) of this section, total eligible losses of individual dairy operations that, as calculated as an overall percentage for each full claim period applicable to the disaster declaration, are greater than 20 percent of the total base year production will be paid at the maximum rate under paragraph (a) of this section to the extent available funding allows. A loss of over 20 percent in only one or two months during the applicable claim period does not of itself qualify for the maximum per-pound payment. Rather, the priority level must be reached as an average over the whole claim period for the relevant calendar year. Total eligible losses for a producer, as calculated under § 786.106, of less than or equal to 20 percent during the eligible claim period will then be paid at a rate, not to exceed the rate allowed in paragraph (a) of this section, determined by dividing the eligible losses of less than 20 percent by the funds remaining after making payments for all eligible losses above the 20-percent threshold.

(d) In no event will the payment exceed the value determined by multiplying the producer's total eligible loss times the average price received for commercial milk production in the producer's area as defined in paragraph (a) of this section.

(e) No participant will receive disaster benefits under this part that in combination with the value of production not lost would result in an amount that exceeds 95 percent of the value of the expected production for the relevant period as estimated by the Secretary. The sum of the value of the production not lost, if any, and the disaster payment received under this part cannot exceed 95 percent of what the production's value would have been if there had been no loss.

(f) A reserve may be created to handle pending or disputed claims, but claims will not be payable once the available funding is expended.

**§ 786.108 Availability of funds.**

The total available program funds are $16 million as provided by section 9007 of Title IX of Public Law 110–28.

**§ 786.109 Appeals.**

Provisions of the appeal regulations set forth at 7 CFR parts 11 and 780 apply to this part. Appeals of determinations of ineligibility or payment amounts are subject to the limitations in §§ 786.107 and 786.108 and other limitations that may apply.

**§ 786.110 Misrepresentation, scheme, or device.**

(a) In addition to other penalties, sanctions, or remedies that may apply, a dairy producer is ineligible to receive assistance under this program if the producer is determined by FSA to have:

(1) Adopted any scheme or device that tends to defeat the purpose of this program,

(2) Made any fraudulent representation,

(3) Misrepresented any fact affecting a program determination, or

(4) Violated 7 CFR 795.17 and thus be ineligible for the year(s) of violation and the subsequent year.

(b) Any funds disbursed pursuant to this part to any person or dairy operation engaged in a misrepresentation, scheme, or device must be refunded with interest together with such other sums as may become due. Interest will run from the date of the disbursement to the producer or other recipient of the payment from FSA. Any person or dairy operation engaged in acts prohibited by this section and any person or dairy operation receiving payment under this part is jointly and severally liable with other persons or dairy operations involved in such claim for benefits for any refund due under this section and for related charges. The remedies provided in this part are in addition to other civil, criminal, or administrative remedies that may apply.

**§ 786.111 Death, incompetence, or disappearance.**

In the case of death, incompetency, disappearance, or dissolution of an individual or entity that is eligible to receive benefits in accordance with this part, such alternate person or persons specified in 7 CFR part 707 may receive such benefits, as determined appropriate by FSA.

**§ 786.112 Maintaining records.**

Persons applying for benefits under this program must maintain records and accounts to document all eligibility requirements specified herein and must keep such records and accounts for 3 years after the date of payment to their dairy operations under this program. Destruction of the records after such date is at the risk of the party required, by this part, to keep the records.

**§ 786.113 Refunds; joint and several liability.**

(a) Excess payments, payments provided as the result of erroneous information provided by any person, or payments resulting from a failure to meet any requirement or condition for payment under the application or this part, must be refunded to FSA.

(b) A refund required under this section is due with interest determined in accordance with paragraph (d) of this section and late payment charges as provided in 7 CFR part 792. Notwithstanding any other regulation, interest will be due from the date of the disbursement to the producer or other recipient of the funds.

(c) Persons signing a dairy operation's application as having an interest in the operation will be jointly and severally liable for any refund and related charges found to be due under this section.

(d) In the event FSA determines a participant owes a refund under this part, FSA will charge program interest from the date of disbursement of the erroneous payment. Such interest will accrue at the rate that the United States Department of the Treasury charges FSA for funds plus additional charges as deemed appropriate by the Administrator or provided for by regulation or statute.

(e) The debt collection provisions of part 792 of this chapter applies to this part except as is otherwise provided in this part.

**§ 786.114 Miscellaneous provisions.**

(a) Payments or any portion thereof due under this part must be made without regard to questions of title under State law and without regard to any claim or lien against the livestock, or proceeds thereof, in favor of the owner or any other creditor except agencies and instrumentalities of the U.S. Government.

(b) Any producer entitled to any payment under this part may assign any payments in accordance with the provisions of 7 CFR part 1404.

**§ 786.115 Termination of program.**

This program will be terminated after payment has been made to those applicants certified as eligible pursuant to the application period established in § 786.104. All eligibility determinations will be final except as otherwise determined by the Deputy Administrator. Any claim for payment may be denied once the allowed funds are expended, irrespective of any other provision of this part.

Signed at Washington, DC, on November 19, 2007.

**Glen L. Keppy,**

*Acting Administrator, Farm Service Agency.*

[FR Doc. E7–22904 Filed 11–23–07; 8:45 am]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–0229; Directorate Identifier 2007–NM–042–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A330–200, A330–300, A340–200, and A340–300 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes. The existing AD currently requires a revision of the airplane flight manual to include procedures for a pre-flight elevator check before each flight, repetitive inspections for cracks of the attachment lugs of the mode selector valve position transducers on the elevator servo controls, and corrective actions if necessary. This proposed AD would retain the existing requirements, reduce the applicability of the existing AD, and add terminating actions. For certain airplanes, this proposed AD would require upgrading the flight control primary computers. This proposed AD results from cracks of the transducer body at its attachment lugs. We are proposing this AD to ensure proper functioning of the elevator surfaces, and to prevent cracking of the attachment lugs, which could result in partial loss of elevator function and consequent reduced controllability of the airplane.

**DATES:** We must receive comments on this proposed AD by December 26, 2007.

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

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

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

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0229; Directorate Identifier 2007-NM–042-AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each

substantive verbal contact we receive about this proposed AD.

**Discussion**

On February 2, 2004, we issued AD 2004–03–24, amendment 39–13468 (69 FR 6549, February 11, 2004), for all Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes. That AD requires a revision of the airplane flight manual to include procedures for a pre-flight elevator check before each flight, repetitive inspections for cracks of the attachment lugs of the mode selector valve position transducers on the elevator servo controls, and corrective actions if necessary. That AD resulted from a report of cracks of the transducer body at its attachment lugs. We issued that AD to ensure proper functioning of the elevator surfaces, and to detect and correct cracking of the attachment lugs, which could result in partial loss of elevator function and consequent reduced controllability of the airplane.

**Actions Since Existing AD Was Issued**

The preamble to AD 2004–03–24 explains that we consider the requirements ''interim action'' and were considering further rulemaking. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

**Relevant Service Information**

The following service information has been issued:

SERVICE INFORMATION

| Service information | Description |
|---|---|
| Airbus Service Bulletin A330–27–3128, dated May 3, 2005 (for Model A330–200 and –300 series airplanes); and Airbus Service Bulletin A340–27–4129, dated May 3, 2005 (for Model A340–200 and –300 series airplanes). | Inspection of the elevator servo control to determine whether part number (P/N) SC4800–7A or –9 is installed, and modification of the four elevator servo controls if necessary. |
| Airbus Service Bulletin A340–27–4131, dated February 21, 2005 (for Model A340–200 and –300 series airplanes). | Upgrade of flight control primary computers (FCPCs). |
| Goodrich Actuation Systems Service Bulletin SC4800–27–16, Revision 3, dated May 19, 2006. | Inspection of the elevator servo controls, P/N SC4800–10 and SC4800–11, to determine the serial number (S/N) installed, and replacement of the mode selector valve position transducer (MVT) of the elevator servo controls with a new MVT if necessary. |
| TRW Service Bulletin SC4800–27–34–09, Revision 1, dated November 9, 2001. | Replacement of the eye-end equipped with a self-lubricated bearing with a new eye-end equipped with a roller bearing, greasing of the new eye-end, and reidentification of the servo control. These actions must be done prior to or concurrently with the actions specified in Goodrich Actuation Systems Service Bulletin SC4800–27–16. |

Airbus Service Bulletin A340–27–4131 refers to Airbus Vendor Service Bulletins LA2K0–27–017 and LA2K1–27–009, both dated January 25, 2005, as additional sources of service information for upgrading the FCPCs.

Airbus Service Bulletins A330–27–3128 and A340–27–4129 refer to Goodrich Actuation Systems Service Bulletin SC4800–27–16, Revision 3, dated May 19, 2006, as an additional source of service information for accomplishing the modification of the four elevator servo controls.

Accomplishing the actions specified in Airbus Service Bulletin A330–27–3128 or A340–27–4129, as applicable, Goodrich Actuation Systems Service Bulletin SC4800–27–16, and TRW Service Bulletin SC4800–27–34–09, if required, would cancel the requirements of AD 2004–03–24. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, mandated the service information and issued airworthiness directive 2007–0011, dated January 9, 2007, to ensure the continued airworthiness of these airplanes in the European Union.

**FAA's Determination and Requirements of the Proposed AD**

These airplanes are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. As described in FAA Order 8100.14A, ''Interim Procedures for Working with the European Community on Airworthiness Certification and Continued Airworthiness,'' dated August 12, 2005, the EASA has kept the FAA informed of the situation described above. We have examined the EASA's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 2004–03–24 and would retain the requirements of the existing AD. This proposed AD also would require accomplishing the actions specified in service information described previously. Accomplishing the actions specified in Airbus Service Bulletin A330–27–3128 or A340–27–4129, as applicable, Goodrich Actuation Systems Service Bulletin SC4800–27–16, and TRW Service Bulletin SC4800–27–34–09, if required, would constitute terminating action for the retained requirements of 2004–03–24. This proposed AD also would remove airplanes from the applicability of the existing AD.

**Changes to Existing AD**

This proposed AD would retain all requirements of AD 2004–03–24. Since AD 2004–03–24 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

| Requirement in AD 2004–03–24 | Corresponding requirement in this proposed AD |
|---|---|
| Paragraph (a) | Paragraph (f). |
| Paragraph (b) | Paragraph (g). |
| Paragraph (c) | Paragraph (h). |
| Paragraph (d) | Paragraph (i). |
| Paragraph (e) | Paragraph (j). |
| Paragraph (f) | Paragraph (k). |

AD 2004–03–24 affects all Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes. The applicability of this proposed AD would

exclude those airplanes on which a reinforced mode selector valve has been installed, which parallels the applicability of EASA airworthiness directive 2007–0011.

**Costs of Compliance**

The following table provides the estimated costs for U.S. operators of the affected Model A330–200 and A330–300 series airplanes to comply with this proposed AD.

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|
| AFM revision (required by AD 2004–03–24) | 1 | $80 | $80 | 29 | $2,320. |
| Inspection (required by AD 2004–03–24) | 4 | $80 | $320, per inspection cycle. | 29 | $9,280, per inspection cycle. |
| Inspection (new proposed action) | 1 | $80 | $80 | 29 | $2,320. |

Currently, there are no affected Model A340–200 and A340–300 series airplanes on the U.S. Register. However, if an affected airplane is imported and placed on the U.S. Register in the future, the proposed upgrade of the FCPCs would take about 2 work hours, at an average labor rate of $80 per work hour. The manufacturer states that it would supply required parts to the operators at no cost. Based on these figures, we estimate the cost of this proposed AD for Model A340–200 and A340–300 series airplanes to be $160 per airplane.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13468 (69 FR 6549, February 11, 2004) and adding the following new airworthiness directive (AD):

**Airbus:** Docket No. FAA–2007–0229; Directorate Identifier 2007–NM–042–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by December 26, 2007.

**Affected ADs**

(b) This AD supersedes AD 2004–03–24.

**Applicability**

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

TABLE 1.—APPLICABILITY

| Airbus model— | Excluding those airplanes on which any of the following— | Has been installed— |
|---|---|---|
| A330–200, A330–300, A340–200, and A340–300 series airplanes. | Airbus modification 50394, 52195, 53969, or 54833 | In production. |
| | Airbus Service Bulletin A330–27–3128, dated May 3, 2005 | In service. |
| | Airbus Service Bulletin A340–27–4129, dated May 3, 2005 | In service. |
| | Airbus Service Bulletin A330–27–3136, Revision 01, dated July 19, 2006 | In service. |
| | Airbus Service Bulletin A340–27–4135, dated January 12, 2006 | In service. |
| | Goodrich Actuation Systems Service Bulletin SC4800–27–16, Revision 03, dated May 19, 2006. | In service. |

**Unsafe Condition**

(d) This AD results from a report of cracks of the transducer body at its attachment lugs. We are issuing this AD to ensure proper functioning of the elevator surfaces, and to prevent cracking of the attachment lugs, which could result in partial loss of elevator function and consequent reduced controllability of the airplane.

**Compliance**

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

**Requirements of AD 2004–03–24**

**Airplane Flight Manual (AFM) Revision**

(f) Within 30 days after February 26, 2004 (the effective date of AD 2004–03–24), revise the Limitations section of the AFM to include a pre-flight elevator check, by including the following language. This may be done by inserting a copy of this AD into the applicable AFM. Thereafter perform the pre-flight check before every flight in accordance with the procedure.

**Prior or During Taxi**

''FLIGHT CONTROLS—CHECK

1. AT A CONVENIENT STAGE, PRIOR TO OR DURING TAXI, AND BEFORE ARMING THE AUTOBRAKE, THE PF SILENTLY APPLIES FULL LONGITUDINAL AND LATERAL SIDESTICK DEFLECTION. ON THE F/CTL PAGE, THE PNF CHECKS FULL TRAVEL OF ALL ELEVATORS AND ALL AILERONS, AND THE CORRECT DEFLECTION AND RETRACTION OF ALL SPOILERS. THE PNF CALLS OUT ''FULL UP,'' ''FULL DOWN,'' ''NEUTRAL,'' ''FULL LEFT,'' ''FULL RIGHT,'' ''NEUTRAL,'' AS EACH FULL TRAVEL/NEUTRAL POSITION IS REACHED. THE PF SILENTLY CHECKS THAT THE PNF CALLS ARE IN ACCORDANCE WITH THE SIDESTICK ORDER.

*NOTE:* IN ORDER TO REACH FULL TRAVEL, FULL SIDESTICK MUST BE HELD FOR A SUFFICIENT PERIOD OF TIME.

2. THE PF PRESSES THE PEDAL DISC PUSHBUTTON ON THE NOSEWHEEL TILLER, AND SILENTLY APPLIES FULL LEFT RUDDER, FULL RIGHT RUDDER, AND NEUTRAL. THE PNF CALLS OUT ''FULL LEFT,'' ''FULL RIGHT,'' ''NEUTRAL,'' AS EACH FULL TRAVEL/NEUTRAL POSITION IS REACHED.

3. THE PNF APPLIES FULL LONGITUDINAL AND LATERAL SIDESTICK DEFLECTION, AND SILENTLY CHECKS FULL TRAVEL AND CORRECT SENSE OF ALL ELEVATORS AND ALL AILERONS, AND CORRECT DEFLECTION AND RETRACTION OF ALL SPOILERS, ON THE ECAM F/CTL PAGE.''

**Note 1:** Full and complete elevator travel (position commanded) can be verified on the ECAM Flight Control Page. A determination of ''correct sense'' should include verification that there is complete and full motion of the sidesticks without binding.

(g) If any pre-flight check required by paragraph (f) of this AD reveals improper function of the elevator: Before further flight, perform the inspections required by paragraph (h) of this AD.

**Inspections**

(h) At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, except as required by paragraph (g) of this AD: Perform a dye penetrant inspection of the attachment lugs of the mode selector valve position transducers on each elevator servo control installed at damping positions 3CS1 and 3CS2. Do the inspection in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27A3115 or A340–27A4119, both Revision 02, both dated December 30, 2003, as applicable (in paragraphs (h) through (k) of this AD, referred to as ''the service bulletin''). An inspection that is done before February 26, 2004, is acceptable for compliance with the initial inspection requirement of this paragraph, if the inspection is done in accordance with any of the following Airbus All Operators Telexes (AOTs): AOT A330–27A3115 or A340–27A4119, dated September 11, 2003, or Revision 01 of each AOT dated September 25, 2003; as applicable. Repeat the inspection thereafter at intervals not to exceed 350 flight cycles, until the applicable actions required by paragraphs (m) and (n) of this AD have been done.

(1) If the age of the servo control from the date of its first installation on the airplane can be positively determined: Do the inspection before the accumulation of 1,000 total flight cycles on the elevator servo control, or within 350 flight cycles on the servo control after February 26, 2004, whichever occurs later.

(2) If the age of the servo control from the date of its first installation on the airplane cannot be positively determined, do the inspection within 350 flight cycles on the servo control after February 26, 2004.

**Note 2:** The service bulletin refers to Goodrich Actuation Systems Inspection Service Bulletin SC4800–27–13 as an additional source of service information for the inspection.

**Corrective Actions**

(i) If any crack is found during any inspection required by paragraph (h) of this AD: Before further flight, replace either the transducer or servo control with a new part, in accordance with the service bulletin.

**Reporting Requirement**

(j) If any crack is found during any inspection required by paragraph (h) of this AD: Submit a report in accordance with the service bulletin at the applicable time(s) specified in paragraphs (j)(1) and (j)(2) of this AD: Submit reports to Airbus Customer Services, Engineering and Technical Support, Attention: J. Laurent, SEE53, fax +33/(0)5.61.93.44.25, Sita Code TLSBQ7X. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) For an initial inspection done before February 26, 2004: Submit the report within 30 days after February 26, 2004.

(2) For an inspection done after February 26, 2004: Submit the report within 30 days after the inspection.

**Parts Installation**

(k) As of February 26, 2004, no person may install the following part on any airplane: A transducer, or a transducer fitted on an elevator servo control, in the operator's inventory before September 25, 2003, unless that transducer has been inspected in accordance with the service bulletin and is crack free.

**New Requirements of This AD**

**Upgrade Flight Control Primary Computers (FCPCs)**

(l) For Model A340–200 and –300 series airplanes: Within 2 months after the effective date of this AD, upgrade the three FCPCs in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–27–4131, dated February 21, 2005.

**Note 3:** Airbus Service Bulletin A340–27–4131 refers to Airbus Vendor Service Bulletins LA2K0–27–017 and LA2K1–27–009, both dated January 25, 2005, as additional sources of service information for upgrading the FCPCs.

**Terminating Actions**

(m) Within 17 months after the effective date of this AD, do the actions specified in Table 2 of this AD.

TABLE 2.—TERMINATING ACTIONS

| Inspect— | In accordance with the accomplishment instructions of airbus service bulletin— | And if— | Then— | In accordance with— |
|---|---|---|---|---|
| (1) The elevator servo control to determine whether part number (P/N) SC4800–7A or –9 is installed. | A330–27–3128, dated May 3, 2005 (for Model A330–200 and –300 series airplanes); or A340–27–4129, dated May 3, 2005 (for Model A340–200 and –300 series airplanes); as applicable. | P/N SC4800–7A or –9 is found installed. | Modify the four elevator servo controls. | The Accomplishment Instructions of the applicable Airbus service bulletin. |
| (2) The elevator servo controls, P/N SC4800–10 and SC4800–11 to determine the serial number (S/N) installed. | None | S/N 2324 or below is found installed. | Replace the mode selector valve position transducer (MVT) of the elevator servo controls with a new MVT. | Paragraphs 3.(2) and 3.B.(2) of the Accomplishment Instructions of Goodrich Actuation Systems Service Bulletin SC4800–27–16, Revision 3, dated May 19, 2006. |

**Note 4:** Airbus Service Bulletins A330–27–3128 and A340–27–4129 refer to Goodrich Actuation Systems Service Bulletin SC4800–27–16, Revision 3, dated May 19, 2006, as an additional source of service information for accomplishing the modification of the four elevator servo controls.

(n) Prior to or concurrently with the replacement, if required, specified in paragraph (m)(2) of this AD, replace the eye-end equipped with a self-lubricated bearing with a new eye-end equipped with a roller bearing, grease the new eye-end, and reidentify the servo control, in accordance with paragraph 2.A. of the Accomplishment Instructions of TRW Service Bulletin SC4800–27–34–09, Revision 1, dated November 9, 2001.

(o) Accomplishing all of the applicable actions required by paragraphs (m) and (n) of this AD constitutes terminating action for paragraphs (f) through (k) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(p)(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**

(q) EASA airworthiness directive 2007–0011, dated January 9, 2007, also addresses the subject of this AD.

Issued in Renton, Washington, on November 13, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–22921 Filed 11–23–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–0226; Directorate Identifier 2007–NM–187–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–300, –400, and –500 series airplanes. This proposed AD would require repetitive inspections for cracking of the body buttock line (BBL) 0.07 floor beam between body station (BS) 651 and BS 676 and between BS 698 and BS 717, and related investigative and corrective actions if necessary. This AD also provides an optional terminating action for the repetitive inspections. This proposed AD results from reports of cracking in the BBL 0.07 floor beam. We are proposing this AD to prevent failure of the main deck floor beams at certain body stations due to fatigue cracking, which could result in rapid decompression of the airplane.

**DATES:** We must receive comments on this proposed AD by January 10, 2008.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office,

1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6440; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0226; Directorate Identifier 2007–NM–187–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

**Other Related Rulemaking**

On July 12, 2001, we issued AD 2001–14–20, amendment 39–12331 (66 FR 38354, July 24, 2001), applicable to certain Boeing Model 737–100 and –200 series airplanes. AD 2001–14–20 requires repetitive inspections to find fatigue cracking in the main deck floor beams located at certain body stations, and repair if necessary. AD 2001–14–20 also provides for optional terminating action for the repetitive inspections. AD 2001–14–20 addresses fatigue cracking in the main deck floor beams on Model 737–100 and –200 series airplanes, while this proposed AD would address the same unsafe condition on Boeing Model 737–300, –400, and –500 series airplanes.

**Discussion**

Since we issued AD 2001–14–20, several operators have reported cracking in the body buttock line (BBL) 0.07 floor beam on Model 737–300, –400, and –500 series airplanes. The cracks were similar to those found on the Model 737–100 and –200 series airplanes, which are addressed by AD 2001–14–20. Investigation revealed that the cracks were caused by fatigue resulting from pressurization flexure. Failure of the main deck floor beam at certain body stations due to fatigue cracking could result in rapid decompression of the airplane.

**Relevant Service Information**

We have reviewed Boeing Service Bulletin 737–57–1210, Revision 2, dated June 13, 2007. For Model 737–300, –400, and –500 series airplanes, the service bulletin describes procedures for accomplishing repetitive detailed inspections for cracking of the BBL 0.07 floor beam between body station (BS) 651 and BS 676 and between BS 698 and BS 717, and doing related investigative and corrective actions if necessary. The related investigative action includes doing a high frequency eddy current (HFEC) inspection of the fastener holes for cracking (1) prior to modifying the floor beam, or (2) if any cracking is found in the web (between BS 651 and BS 676 and between BS 698 and BS 717) or in the upper chord (between BS 651 and BS 676) during the detailed inspection. The corrective actions include the following:

- Repairing any cracking in accordance with the service bulletin, if cracking is found in the web (between BS 651 and BS 676 and between BS 698 and BS 717) or in the upper chord (between BS 651 and BS 676) during the detailed inspection but no cracking is found during the HFEC inspection. Accomplishing the repair would eliminate the need for the repetitive inspections for the area in which the repair is installed.
- Contacting Boeing for repair instructions, (1) if cracking is found in the web (between BS 651 and BS 676 and between BS 698 and BS 717) or in the upper chord (between BS 651 and BS 676) during the HFEC inspections, (2) if cracking is found in the chords or stiffeners (between BS 698 and BS 717) or outside the typical crack locations (between BS 651 and BS 676 and between BS 698 and BS 717) during the detailed inspection, or (3) if cracking is found during the HFEC prior to modifying the floor beam.

The service bulletin also provides procedures for modifying the floor beam, if no cracking is found during the detailed and HFEC inspections. Accomplishing the modification (optional terminating action) would eliminate the need for the repetitive inspections for the area in which the modification is installed.

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

**FAA's Determination and Requirements of the Proposed AD**

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

**Difference Between the Proposed AD and Service Bulletin**

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

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

**Costs of Compliance**

There are about 1,961 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 599 airplanes of U.S. registry. The proposed inspections would take about 4 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $191,680, or $320 per airplane, per inspection cycle.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or

on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Boeing:** Docket No. FAA–2007–0226; Directorate Identifier 2007–NM–187–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by January 10, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 737–300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Service Bulletin 737–57–1210, excluding Appendix A, Revision 2, dated June 13, 2007.

**Unsafe Condition**

(d) This AD results from reports of cracking in the body buttock line (BBL) 0.07 floor beam. We are issuing this AD to prevent failure of the main deck floor beams at certain body stations due to fatigue cracking, which could result in rapid decompression of the airplane.

**Compliance**

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

**Inspections and Related Investigative/Corrective Actions**

(f) Before the accumulation of 20,000 total flight hours, or within 7,000 flight cycles after the effective date of this AD, whichever occurs later: Do the detailed inspections for cracking of the BBL 0.07 floor beam between body station (BS) 651 and BS 676 and between BS 698 and BS 717, and do all the applicable related investigative and corrective actions before further flight, by accomplishing all of the applicable actions specified in paragraphs B.2. and B.4. of the Accomplishment Instructions of Boeing Service Bulletin 737–57–1210, excluding Appendix A, Revision 2, dated June 13, 2007, except as provided by paragraph (g) of this AD. Repeat the inspections thereafter at intervals not to exceed 7,000 flight cycles. Installing a repair in accordance with paragraphs B.2. and B.4. of the Accomplishment Instructions of the service bulletin, or doing the modification in accordance with paragraph (h) of this AD, terminates the repetitive inspections for the applicable area only.

**Exception to Corrective Action**

(g) If any cracking is found during any inspection required by this AD, and Boeing Service Bulletin 737–57–1210, excluding Appendix A, Revision 2, dated June 13, 2007, specifies to contact Boeing for appropriate action: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

**Optional Terminating Action**

(h) If no cracking is found during the detailed inspection and related investigative action required by paragraph (f) of this AD: Accomplishing the modification of the BBL 0.07 floor beam between BS 651 and BS 676 and between BS 698 and BS 717, as applicable, in accordance with paragraphs B.2. and B.4., as applicable, of the Accomplishment Instructions of Boeing Service Bulletin 737–57–1210, excluding Appendix A, Revision 2, dated June 13, 2007, terminates the repetitive inspections for the applicable area only.

**Alternative Methods of Compliance (AMOCs)**

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

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

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

Issued in Renton, Washington, on November 13, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–22923 Filed 11–23–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–0225; Directorate Identifier 2007–NM–210–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 757 Airplanes Equipped with Rolls Royce RB211–535E Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 757 airplanes equipped with Rolls Royce RB211–535E engines. This proposed AD would require repetitive inspections for signs of damage of the aft hinge fittings and attachment bolts of the thrust reversers, and related investigative and corrective actions if necessary. This proposed AD results from reports of several incidents of bolt failure at the aft hinge fittings of the thrust reversers due to, among other things, high operational loads. We are proposing this AD to prevent failure of the attachment bolts and consequent separation of a thrust reverser from the airplane during flight, which could result in structural damage to the airplane.

**DATES:** We must receive comments on this proposed AD by January 10, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room

W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Jason Deutschman, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6449; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0225; Directorate Identifier 2007–NM–210–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

**Discussion**

We have received reports indicating that several incidents of bolt failure at the aft hinge fittings of the thrust reversers have occurred on certain Boeing Model 757 airplanes equipped with Rolls Royce RB211–535E engines. Of these incidents, there were nine hinges with failure of one out of four bolts, two hinges with failure of two out of four bolts, and three hinges with failure of three out of four bolts. The possible causes of the bolt failures can be high operational loads, contact loads caused by possible interference between the thrust reverser hinge and the hinge beam, or installation of the four attachment bolts with washers that could rub against the radius of the hinge fitting spotface. The hinge has integral fail safe features, but loss of the entire four-bolt pattern constitutes complete loss of the load path. Failure of the attachment bolts could result in separation of a thrust reverser from the airplane during flight and consequent structural damage to the airplane.

**Relevant Service Information**

We have reviewed Boeing Special Attention Service Bulletins 757–54–0049 and 757–54–0050, both dated July 16, 2007. The service information describes procedures for doing a detailed inspection of the aft hinge fittings and the eight attachment bolts of the thrust reversers for signs of damage (includes, but is not limited to, cracked or broken hinge fittings or contact damage to the base metal), and related investigative and corrective actions if necessary. The compliance time for the initial inspection is within 3,000 flight cycles after the date on the service bulletin.

The related investigative and corrective actions for the number 1 and number 2 engines include the following:

• For airplanes on which any aft hinge fitting is cracked or broken: Accomplish the preventive modification specified in Part III of the Accomplishment Instructions and install a new fitting.

• For airplanes on which any contact damage to the base metal is found that is less than .005 inch deep: Accomplish the preventive modification specified in Part III of the Accomplishment Instructions before further flight; or reapply the surface finish as specified in Part II of the Accomplishment Instructions (standard operating procedures manual 20–60–02), and accomplish the preventive modification within 3,000 flight cycles after the surface finish is applied.

• For airplanes on which any contact damage to the base metal is found that is equal to or more than .005 inches deep: Accomplish the preventive modification as specified in Part III of the Accomplishment Instructions.

• For airplanes on which any damage is found that is outside the limits specified in the service information, the service bulletins recommend contacting Boeing for repair instructions.

• For airplanes on which any attachment bolt is damaged: Accomplish the preventive modification specified in Part III of the Accomplishment Instructions, or remove the damaged bolt and accomplish a high frequency eddy current inspection of the bolt hole for cracking. If no crack is found in the bolt hole, replace the bolt with a new or serviceable bolt before further flight and accomplish the preventive modification within 3,000 flight cycles after the bolt is replaced. If any crack is found, accomplish the preventive modification.

For airplanes on which no attachment bolt is found damaged, repeat the detailed inspection at intervals not to exceed 3,000 flight cycles. Accomplishing the preventive modification at any time would eliminate the need for the repetitive inspections.

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

**Concurrent Service Information**

Service Bulletin 757–54–0049 recommends prior or concurrent accomplishment of Boeing Service Bulletin 757–54–0015, Revision 3, dated September 19, 1996. Service Bulletin 757–54–0015 describes procedures for replacing a certain older hinge fitting and attachment on airplanes after line number 241.

**FAA's Determination and Requirements of the Proposed AD**

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

**Difference Between the AD and the Service Information**

Although Boeing Special Attention Service Bulletins 757–54–0049 and 757–54–0050 specify that you may contact the manufacturer for repair instructions, this proposed AD requires you to repair in one of the following ways:

• Using a method that we approve; or

• Using data that meet the certification basis of the airplane that have been approved by an Authorized Representative for the Boeing Delegation

Option Authorization Organization who has been authorized by the FAA to make those findings.

**Costs of Compliance**

There are about 606 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 295 airplanes of U.S. registry. The proposed inspections would take about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $47,200, or $160 per airplane, per inspection cycle.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Boeing:** Docket No. FAA–2007–0225; Directorate Identifier 2007–NM–210–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by January 10, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 757–200, –200CB, –200PF, and –300 series airplanes, certificated in any category; equipped with Rolls Royce RB211–535E engines.

**Unsafe Condition**

(d) This AD results from reports of several incidents of bolt failure at the aft hinge fittings of the thrust reversers due to, among other things, high operational loads. We are issuing this AD to prevent failure of the attachment bolts and consequent separation of a thrust reverser from the airplane during flight, which could result in structural damage to the airplane.

**Compliance**

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

**Repetitive Inspections/Investigative and Corrective Actions**

(f) At the time specified in paragraph 1.E. ''Compliance'' of Boeing Special Attention Service Bulletins 757–54–0049 or 757–54–0050, both dated July 16, 2007, as applicable, except as provided by paragraph (g) of this AD: Do a detailed inspection for signs of damage of the aft hinge fittings and attachment bolts of the thrust reversers by doing all the actions, including all applicable related investigative and corrective actions, as specified in the Accomplishment Instructions of the applicable service bulletin. Do all applicable related investigative and corrective actions at the time specified in paragraph 1.E., ''Compliance'' of the applicable service bulletin. If any damage is found and the service bulletins specify to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(g) Where Boeing Special Attention Service Bulletins 757–54–0049 and 757–54–0050, both dated July 16, 2007, specify compliance times relative to the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

**Concurrent Service Information**

(h) Prior to or concurrently with accomplishing the actions specified in Boeing Special Attention Service Bulletin 757–54–0049, dated July 16, 2007, accomplish the replacement specified in Boeing Service Bulletin 757–54–0015, Revision 3, dated September 19, 1996.

(i) Actions accomplished before the effective date of this AD in accordance with Boeing Service Bulletin 757–54–0015, dated February 16, 1989; Revision 1, dated December 20, 1990; or Revision 2, dated April 21, 1994; are considered acceptable for compliance with the corresponding actions specified in paragraph (h) of this AD.

**Alternative Methods of Compliance (AMOCs)**

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

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

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

Issued in Renton, Washington, on November 13, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–22924 Filed 11–23–07; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2007–0230; Directorate Identifier 2007–NM–043–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A330–200, A330–300, A340–200, and A340–300 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes. The existing AD currently requires an accelerated schedule of repetitive testing of the elevator servo control loops, and corrective actions if necessary. This proposed AD would retain the existing requirements, reduce the applicability of the existing AD, and add terminating actions. This proposed AD results from reports of failed elevator servo controls due to broken guides. We are proposing this AD to prevent failure of the elevator servo controls during certain phases of takeoff, which could result in an unannounced loss of elevator control and consequent reduced controllability of the airplane.

**DATES:** We must receive comments on this proposed AD by December 26, 2007.

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

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

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

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0230; Directorate Identifier 2007–NM–043–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

### Discussion

On October 31, 2005, we issued AD 2005–23–10, amendment 39–14368 (70 FR 69065, November 14, 2005), for all Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes. That AD requires an accelerated schedule of repetitive testing of the elevator servo control loops, and corrective actions if necessary. That AD resulted from reports of failed elevator servo controls due to broken guides. We issued that AD to ensure proper functioning of the elevator servo controls. Failure of the elevator servo controls during certain phases of takeoff could result in an unannounced loss of elevator control and consequent reduced controllability of the airplane.

### Actions Since Existing AD Was Issued

The preamble to AD 2005–23–10 explains that we consider the requirements ''interim action'' and were considering further rulemaking. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

### Relevant Service Information

Airbus has issued Revision 02 of Airbus Service Bulletins A330–27–3138 (for Model A330–200 and –300 series airplanes) and A340–27–4137 (for Model A340–200 and –300 series airplanes); both dated May 30, 2006. These service bulletins supersede, respectively, Revision 01 of Airbus All Operator Telexes (AOT) A330–27A3138 and A340–27A4137, both dated October 3, 2005. The AOTs are referenced in AD 2005–23–10 as the appropriate source of service information for accomplishing the required testing of the elevator servo control loops, and corrective actions if necessary. The procedures specified in Revision 02 of the service bulletins are identical to those in Revision 01 of the AOTs. No additional work is necessary for airplanes on which the actions specified in Revision 01 of the applicable AOT have been done.

Airbus also has issued the following service bulletins:

SERVICE BULLETINS

| Airbus service bulletins— | Describe procedures for— | And refer to— |
|---|---|---|
| A330–27–3136, Revision 01, dated July 19, 2006 (for Model A330–200 and –300 series airplanes); and A340–27–4135, dated January 12, 2006 (for Model A340–200 and –300 series airplanes). | Modification of four elevator servo controls by installing a new plug-guide assembly. | Goodrich Actuation Systems Service Bulletin SC4800–27–18, Revision 1, dated May 19, 2006, as an additional source of service information for accomplishing the modification. |

SERVICE BULLETINS—Continued

| Airbus service bulletins— | Describe procedures for— | And refer to— |
|---|---|---|
| A330–27–3134, Revision 01, dated May 12, 2006 (for Model A330–200 and –300 series airplanes); and A340–27–4132, dated October 13, 2005 (for Model A340–200 and –300 series airplanes). | Modification of four elevator servo controls by replacing the o-ring of the solenoid valves with a new o-ring. | Goodrich Actuation Systems Service Bulletin SC4800–27–17, Revision 2, dated May 19, 2006, as an additional source of service information for accomplishing the modification. |

Accomplishing the modification specified in the service bulletins eliminates the need for the repetitive inspection requirements of AD 2005–23–10 and is intended to adequately address the unsafe condition. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, mandated the service information and issued airworthiness directive 2007–0008, dated January 9, 2007, to ensure the continued airworthiness of these airplanes in the European Union.

**FAA's Determination and Requirements of the Proposed AD**

These airplanes are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. As described in FAA Order 8100.14A, ''Interim Procedures for Working with the European Community on Airworthiness Certification and Continued Airworthiness,'' dated August 12, 2005, the EASA has kept the FAA informed of the situation described above. We have examined the EASA's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 2005–23–10 and would retain the requirements of the existing AD. This proposed AD also would require accomplishing the actions specified in service information described previously. Accomplishing the modification specified in the service bulletins described previously eliminates the need for the retained requirements of 2005–23–10. This proposed AD also would remove airplanes from the applicability of the existing AD.

**Costs of Compliance**

The following table provides the estimated costs for U.S. operators of the affected Model A330–200 and A330–300 series airplanes to comply with this proposed AD.

ESTIMATED COSTS

| Action | Work hour(s) | Average labor rate per hour | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| Inspection (required by AD 2005–23–10). | 1 | $80 | None | $80, per inspection cycle. | 18 | $1,440, per inspection cycle. |
| Modifications (new proposed actions). | 28 | $80 | The manufacturer states that it will supply required parts to the operators at no cost. | $2,240 | 18 | $40,320. |

Currently, there are no affected Model A340–200 and A340–300 series airplanes on the U.S. Register. However, if an affected airplane is imported and placed on the U.S. Register in the future, the proposed modification would take about 10 work hours, at an average labor rate of $80 per work hour. The manufacturer states that it would supply required parts to the operators at no cost. Based on these figures, we estimate the cost of this proposed AD for Model A340–200 and A340–300 series airplanes to be $800 per airplane.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14368 (70 FR 69065, November 14, 2005) and adding the following new airworthiness directive (AD):

**Airbus:** Docket No. FAA–2007–0230; Directorate Identifier 2007–NM–043–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by December 26, 2007.

**Affected ADs**

(b) This AD supersedes AD 2005–23–10.

**Applicability**

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

TABLE 1.—APPLICABILITY

| Airbus model— | Excluding those airplanes on which any of the following— | Has been installed— |
|---|---|---|
| A330–200, A330–300, A340–200, and A340–300 series airplanes. | Airbus modification 54833 | In production. |
| | Airbus Service Bulletin A330–27–3136, Revision 01, dated July 19, 2006. | In service. |
| | Airbus Service Bulletin A340–27–4135, dated January 12, 2006 | In service. |

**Unsafe Condition**

(d) This AD results from reports of failed elevator servo controls due to broken guides. We are proposing this AD to prevent failure of the elevator servo controls during certain phases of takeoff, which could result in an unannounced loss of elevator control and consequent reduced controllability of the airplane.

**Compliance**

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

**Requirements of AD 2005–23–10**

**Service Information**

(f) The term ''AOT,'' as used in paragraphs (g) through (i) of this AD, means section 4.2. ''Description'' of the following service information, as applicable:

(1) For Model A330–200 and –300 series airplanes: Airbus All Operators Telex A330–27A3138, Revision 01, dated October 3, 2005; and

(2) For Model A340–200 and –300 series airplanes: Airbus All Operators Telex A340–27A4137, Revision 01, dated October 3, 2005.

**Initial and Repetitive Elevator Servo-Loop Tests**

(g) Within 200 flight hours after November 29, 2005 (the effective date of AD 2005–23–10): Test the elevator servo-loops, in accordance with the AOT, except as provided by paragraph (j) of this AD. If the test of the elevator servo-loops passes, repeat the test at intervals not to exceed 140 flight hours or 8 days, whichever occurs first.

**Failed Tests**

(h) If any test of the elevator servo-loops required by paragraph (g) of this AD fails: Before further flight, troubleshoot the cause of the test failure, and do the applicable corrective actions; in accordance with the AOT, except as provided by paragraph (j) of this AD. Thereafter, repeat the test at the times specified in paragraph (g) of this AD.

**Reporting Requirement**

(i) Following each test required by paragraph (g) of this AD, submit a report of the findings of only failed elevator servo-loop tests to Airbus Customer Services, Engineering and Technical Support, Attention: Mr. J. Laurent, SEE53, fax +33/(0)5.61.93.44.25; at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. The report must include the description of the failure experienced during the test, the identified cause of the failure, and the number of flight hours and flight cycles on the airplane. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the test was done after November 29, 2005: Submit the report within 10 days after the test.

(2) If the test was done prior to November 29, 2005: Submit the report within 10 days after November 29, 2005.

**New Requirements of This AD**

**New Service Information for Testing**

(j) As of the effective date of this AD, do the actions required by paragraphs (g) and (h) of this AD in accordance with the Accomplishment Instructions of the following service bulletins, as applicable.

(1) For Model A330–200 and –300 series airplanes: Airbus Service Bulletin A330–27–3138, Revision 02, dated May 30, 2006; and

(2) For Model A340–200 and –300 series airplanes: Airbus Service Bulletin A340–27–4137, Revision 02, dated May 30, 2006.

**Terminating Actions**

(k) Within 17 months after the effective date of this AD, modify the four elevator servo controls in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3136, Revision 01, dated July 19, 2006 (for Model A330–200 and –300 series airplanes); or Airbus Service Bulletin A340–27–4135, dated January 12, 2006 (for Model A340–200 and –300 series airplanes); as applicable.

**Note 1:** Airbus Service Bulletins A330–27–3136 and A340–27–4135 refer to Goodrich Actuation Systems Service Bulletin SC4800–27–18, Revision 1, dated May 19, 2006, as an additional source of service information for accomplishing the modification required by paragraph (k) of this AD.

(l) Modifications done before the effective date of this AD in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3136, dated January 12, 2006, are acceptable for compliance with the modification required by paragraph (k) of this AD.

(m) Concurrently with the modification required by paragraph (k) of this AD, modify the four elevator servo controls in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3134, Revision 01, dated May 12, 2006 (for Model A330–200 and –300 series airplanes); or Airbus Service Bulletin A340–27–4132, dated October 13, 2005 (for Model A340–200 and –300 series airplanes); as applicable.

**Note 2:** Airbus Service Bulletins A330–27–3134 and A340–27–4132 refer to Goodrich Actuation Systems Service Bulletin SC4800–27–17, Revision 2, dated May 19, 2006, as an additional source of service information for accomplishing the modification required by paragraph (m) of this AD.

(n) Modifications done before the effective date of this AD in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3134, dated October 13, 2005, are acceptable for compliance with the modification required by paragraph (m) of this AD.

(o) Accomplishment of the modifications required by paragraphs (k) and (m) of this AD constitutes terminating action for the

requirements of paragraphs (f) through (i) of this AD.

**Parts Installation**

(p) As of the effective date of this AD, no person may install, on any airplane, an elevator servo control, unless it has been modified in accordance with paragraphs (k) and (m) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(q)(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**

(r) EASA airworthiness directive 2007–0008, dated January 9, 2007, also addresses the subject of this AD.

Issued in Renton, Washington, on November 13, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–22925 Filed 11–23–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–0228; Directorate Identifier 2007–NM–107–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–200 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–200 series airplanes. This proposed AD would require repetitive inspections to detect cracking of the support fittings of the Krueger flap actuators, and corrective actions if necessary. This proposed AD also would require eventual replacement of any existing aluminum support fitting on each wing with a steel fitting, and modification of the aft attachment of the actuator. Doing these actions would terminate the repetitive inspection requirements. This proposed AD results from reports of cracking due to fatigue and stress corrosion of the support fittings of the Krueger flap actuator. We are proposing this AD to prevent cracking of the support fittings, which could result in fracturing of the actuator attach lugs, separation of the actuator from the support fitting, severing of the hydraulic lines, resultant loss of hydraulic fluids, and consequent reduced controllability of the airplane.

**DATES:** We must receive comments on this proposed AD by January 10, 2008.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6440; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0228; Directorate Identifier 2007–NM–107–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

### Discussion

We have received reports of cracks in the support fitting of the Krueger flap actuator mounted on the front spar of eight affected airplanes. On one airplane, the lugs on the No. 1 Krueger flap actuator support fitting severed completely, the actuator separated from the front spar, and the hydraulic lines were severed. On another airplane, both actuator attach lugs of a No. 1 flap support fitting were also completely severed. The cracking is attributed to fatigue and stress corrosion, and it is suspected that high clamp-up stresses may be contributing to cracks in the actuator attach lugs. Cracking of the support fittings, if not corrected, could result in fracturing of the actuator attach lugs, separation of the actuator from the support fitting, severing of the hydraulic lines, resultant loss of hydraulic fluids, and consequent reduced controllability of the airplane.

### Other Relevant Rulemaking

On July 31, 2000, we issued AD 2000–15–18, amendment 39–11851 (65 FR 48371, August 8, 2000). That AD applies to certain Boeing Model 737–100 and –200 series airplanes, line numbers 001 through 813 inclusive. That AD requires inspections to detect cracking of the support fittings of the Krueger flap actuator; and, if necessary, replacement of existing fittings with new steel fittings and modification of the aft attachment of the actuator. That AD also requires eventual replacement of any existing aluminum Krueger flap actuator support fitting on each wing with a steel fitting, which terminates the repetitive inspection requirements. That AD resulted from reports of cracking due to fatigue and stress corrosion of the support fittings of the Krueger flap actuator. The actions in that AD are intended to prevent such cracking, which could result in fracturing of the actuator attach lugs, separation of the actuator from the support fitting, severing of the hydraulic lines, and

resultant loss of hydraulic fluids. These conditions, if not corrected, could result in possible failure of one or more hydraulic systems, and consequent reduced controllability of the airplane.

Since we issued AD 2000–15–18, we have determined that the same unsafe condition addressed in that AD exists on certain additional Model 737–200 series airplanes. We were advised that Model 737–200 series airplanes, line numbers 814 through 826 inclusive, are also subject to the same unsafe condition addressed in AD 2000–15–18.

**Relevant Service Information**

We have reviewed Boeing Special Attention Service Bulletin 737–57–1129, Revision 3, dated March 19, 2007. The service bulletin describes procedures for repetitive high frequency eddy current (HFEC) inspections to detect cracking of the support fittings of the Krueger flap actuators, and corrective actions if necessary. The corrective actions are replacement of existing fittings with new steel fittings and modification of the aft attachment of the actuator. This replacement and modification eliminates the need for the repetitive inspection requirements. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

**FAA's Determination and Requirements of the Proposed AD**

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

**Costs of Compliance**

There are about 13 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| Inspection | 5 | $80 | $0 | $400, per inspection cycle. | 3 | $1,200, per inspection cycle. |
| Replacement | 88 | $80 | $29,642 | $36,682 | 3 | $110,046. |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Boeing:** Docket No. FAA–2007–0228; Directorate Identifier 2007–NM–107–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by January 10, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 737–200 series airplanes, line numbers 814 through 826 inclusive, certificated in any category.

**Unsafe Condition**

(d) This AD results from reports of cracking due to fatigue and stress corrosion of the support fittings of the Krueger flap actuator. We are issuing this AD to prevent cracking of the support fittings, which could result in fracturing of the actuator attach lugs, separation of the actuator from the support fitting, severing of the hydraulic lines, resultant loss of hydraulic fluids, and consequent reduced controllability of the airplane.

**Compliance**

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

**Repetitive Inspections**

(f) Within 12 months after the effective date of this AD, do a high frequency eddy current (HFEC) inspection to detect cracking of the support fittings of the Krueger flap actuator on each wing, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–57–1129, Revision 3, dated March 19, 2007.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 3,000 flight hours until the terminating action required by paragraph (g) of this AD is accomplished.

(2) If any cracking is detected, before further flight, do the replacement and modification specified in paragraph (g) of this AD.

**Terminating Action**

(g) Within 60 months after the effective date of this AD: Replace any existing Krueger flap actuator aluminum support fitting on each wing with a steel fitting, and modify the actuator aft attachment, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–57–1129, Revision 3, dated March 19, 2007. Doing this replacement and modification terminates the repetitive inspection requirements of paragraph (f) of this AD.

**Parts Replacement**

(h) As of the effective date of this AD, no person may install on any airplane any aluminum support fitting (actuator support assembly) identified in the ''Existing Part Number'' column of paragraph 2.C. of Boeing Special Attention Service Bulletin 737–57–1129, Revision 3, dated March 19, 2007.

**Actions Accomplished in Accordance With Previous Revisions of Service Bulletin**

(i) Actions done before the effective date of this AD in accordance with the service bulletins listed in Table 1 of this AD, are acceptable for compliance with the corresponding requirements of this AD.

TABLE 1.—PREVIOUS REVISIONS OF SERVICE BULLETINS

| Boeing service bulletin | Revision level | Date |
|---|---|---|
| 737–57–1129 | 1 | October 30, 1981. |
| 737–57–1129 | 2 | May 28, 1998. |

**Alternative Methods of Compliance (AMOCs)**

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

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

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

Issued in Renton, Washington, on November 13, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–22926 Filed 11–23–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–0224; Directorate Identifier 2007–NM–188–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. This proposed AD would require repetitive inspections for fatigue cracking in the longitudinal floor beam web, upper chord, and lower chord located at certain body stations, and repair if necessary. This proposed AD results from several reports of cracks in the center wing box longitudinal floor beams, upper chord, and lower chord. We are proposing this AD to detect and correct fatigue cracking of the upper and lower chords and web of the longitudinal floor beams, which could result in rapid loss of cabin pressure.

**DATES:** We must receive comments on this proposed AD by January 10, 2008.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6440; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0224; Directorate Identifier 2007–NM–188–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory,

economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

**Discussion**

We have received several reports of fatigue cracks in the center wing box longitudinal floor beams on certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. The cracks were found in the longitudinal floor beam web, upper chord, and lower chord at left buttock line (LBL) 24.8, right buttock line (RBL) 24.8, LBL 45.5 and RBL 45.5, between Station (STA) 656 and STA 727B. The airplanes had accumulated between 17,000 and 70,000 total flight cycles. These fatigue cracks are attributed to cyclic pressurization loads, fuel loads, and passenger loads. Fatigue cracking of the upper and lower chords and web of the longitudinal floor beams, if not corrected, could result in rapid loss of cabin pressure.

**Related Rulemaking**

On December 30, 1998, we issued AD 98–11–04 R1, amendment 39–10984 (64 FR 987) applicable to Boeing Model 737–100 and –200 series airplanes. That AD requires revising the FAA–approved maintenance program to include inspections that will give no less than the required damage tolerance rating for each structural significant item (SSI) if they are not effective for the SSI, and repair of cracked structure. Certain actions in this proposed AD are considered alternative methods of compliance (AMOCs) for paragraphs (b) and (c) of AD 98–11–04 R1.

**Relevant Service Information**

We have reviewed Boeing Service Bulletin 737–57–1296, dated June 13, 2007. The service bulletin describes procedures for the following:

- Detailed inspections for any crack in the upper chord of the longitudinal floor beam at LBL 24.8 and RBL 24.8, between STA 656 and STA 685.
- High frequency eddy current inspections for any crack in the lower chord of the longitudinal floor beam at LBL 24.8 and RBL 24.8, between STA 660 and STA 666.
- Detailed inspections for any crack in the longitudinal floor beam web at LBL 24.8, RBL 24.8, LBL 45.5, and RBL 45.5, between STA 705 and STA 715.
- Detailed inspections for any crack in the horizontal flange of the upper chord of the longitudinal floor beam at LBL 24.8, RBL 24.8, LBL 45.5, and RBL 45.5, at STA 727B.

The compliance times specified are as follows:

For Groups 1 and 2 airplanes: Before the accumulation of 20,000 total flight cycles, or within 6,000 flight cycles after the service bulletin date, whichever occurs later. Repeat the inspections thereafter at intervals not to exceed 6,000 flight cycles.

For Group 3 airplanes: Before the accumulation of 20,000 total flight cycles, or within 7,000 flight cycles after the service bulletin date, whichever occurs later. Repeat the inspections thereafter at intervals not to exceed 7,000 flight cycles.

If a crack is found, the service bulletin recommends contacting Boeing before further flight for repair instructions. If no crack is found, the procedures in the service bulletin specify repeating the inspections. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

**FAA's Determination and Requirements of the Proposed AD**

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

**Difference Between the Proposed AD and Service Information**

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

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

**Costs of Compliance**

There are about 2,852 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 652 airplanes of U.S. registry. The proposed inspection would take approximately 13 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed inspection for U.S. operators is $678,080, or $1,040 per airplane, per inspection cycle.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Boeing:** Docket No. FAA–2007–0224; Directorate Identifier 2007–NM–188–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by January 10, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Service Bulletin 737–57–1296, dated June 13, 2007.

**Unsafe Condition**

(d) This AD results from several reports of cracks in the center wing box longitudinal floor beams, upper chord, and lower chord. We are issuing this AD to detect and correct fatigue cracking of the upper and lower chords and web of the longitudinal floor beams, which could result in rapid loss of cabin pressure.

**Compliance**

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

**Repetitive Inspections**

(f) Do the various inspections for fatigue cracks in the longitudinal floor beam web, upper chord, and lower chord, located at the applicable body stations specified in the Accomplishment Instructions of Boeing Service Bulletin 737–57–1296, dated June 13, 2007, by doing all the actions specified in the Accomplishment Instructions of the service bulletin, except as provided by paragraph (g) of this AD. Do the inspections at the time specified in paragraph (f)(1) or (f)(2) of this AD, as applicable.

(1) For Groups 1 and 2 airplanes as identified in the service bulletin: Do the inspections at the applicable initial compliance time listed in paragraph 1.E., ''Compliance,'' of the service bulletin; except, where the service bulletin specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD. Repeat the inspections thereafter at the intervals specified in paragraph 1.E., ''Compliance,'' of the service bulletin.

(2) For Group 3 airplanes as identified in the service bulletin: Do the inspections at the applicable initial compliance time listed in paragraph 1.E., ''Compliance,'' of the service bulletin; except, where the service bulletin specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD. Repeat the inspections thereafter at the intervals specified in paragraph 1.E., ''Compliance,'' of the service bulletin.

(g) If any crack is found during any inspection required by this AD, and Boeing Service Bulletin 737–57–1296, dated June 13, 2007, specifies contacting Boeing for repair instructions: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (h) of this AD.

**Alternative Methods of Compliance (AMOCs)**

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

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

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

Issued in Renton, Washington, on November 13, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–22928 Filed 11–23–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–0227; Directorate Identifier 2007–NM–159–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 727 Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 727 airplanes. This proposed AD would require repetitive inspections for cracking or corrosion of the threaded end of the lower segment of the main landing gear (MLG) side strut, and corrective actions if necessary. This proposed AD also would require prior or concurrent inspection for cracking or corrosion of the threads and thread relief area of the lower segment, corrective action if necessary, and re-assembly using corrosion inhibiting compound. This proposed AD results from reports of the threads cracking on the MLG side strut lower segment. We are proposing this AD to prevent a fractured side strut, which could result in collapse of the MLG.

**DATES:** We must receive comments on this proposed AD by January 10, 2008.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office,

1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6577; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0227; Directorate Identifier 2007–NM–159–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

**Discussion**

We have received many reports of the threads cracking on the main landing gear (MLG) side strut lower segment, on Boeing Model 727 airplanes. In one instance an operator reported hearing a loud noise during taxiing after landing. The subsequent inspection revealed the MLG side strut was broken at the threaded end of the lower segment, causing the side strut to become detached from the shock strut. This condition, if not corrected, could result in collapse of the MLG.

**Relevant Service Information**

We have reviewed Boeing Special Attention Service Bulletin 727–32–0338, Revision 4, dated April 7, 2007. The service bulletin describes procedures for repetitive detailed and magnetic particle inspections for cracking or corrosion of the threaded end of the lower segment of the MLG side strut. The service bulletin also describes procedures for corrective actions for corrosion or cracking. The corrective actions include replacing the part with a serviceable part, repairing the part as given in the Boeing Model 727 Overhaul Manual (OHM) 32–13–01, and doing a modification of the lower segment. There are five configurations for modification:

- Option I Configuration—Blending out cracks and doing thread root radiusing. This modification applies only to airplanes with maximum taxi gross weight of 191,000 pounds and below.
- Option II Configuration—Installing a new retainer nut, locknut, lock washer, and seals. This modification applies only to airplanes on which the segment is crack-free.
- Option III Configuration—Removing 0.8-inch of the lower end of the lower segment, inserting a spacer, and replacing the retainer nut, locknut, lock washer, and seals.
- Option IV Configuration—Similar to Option III, but also removing additional lubrication on the retainer nut; and applying corrosion inhibiting compound, rather than grease, to the threads at re-assembly.
- Option V Configuration—Replacing the side strut lower segment with a larger-diameter spare (not production) part that has fatigue improvement on the threads.

Boeing Special Attention Service Bulletin 727–32–0338, Revision 4, also recommends the prior or concurrent accomplishment of the actions specified in the table titled ''Prior/Concurrent Service Bulletins.'' The prior/concurrent service bulletins facilitate the overhaul and repair procedures specified in Boeing Special Attention Service Bulletin 727–32–0338, Revision 4.

PRIOR/CONCURRENT SERVICE BULLETINS

| For— | Boeing 727 service bulletin— | Describes procedures for these prior or concurrent actions— |
|---|---|---|
| All airplanes | 727–32–0411, Revision 1, dated February 19, 2007. | Inspecting for corrosion or cracking of the threads and thread relief area of the swivel clevis, and improving the corrosion protection of the swivel clevis fitting threads in commonly affected airplanes. |
| Airplanes specified as Options III, IV and V configurations in Boeing Special Attention Service Bulletin 727–32–0338, Revision 4. | 32–79, Revision 1, dated February 27, 1967 .. | Modifying the MLG side strut universal joint. |
| | 32–157, dated August 30, 1968 | Replacing the MLG side strut swivel bushing, incorporating only Parts Kit 65–89855–1, and not installing the lube fitting in the lower segment. |
| Airplanes specified as Option V configuration in Boeing Special Attention Service Bulletin 727–32–0338, Revision 4. | 727–32–268, Revision 2, dated February 20, 1981. | Inspecting and modifying the MLG side strut. |
| | 727–57–163, dated September 17, 1982 | Resolving the interference between the MLG gear beam and the MLG side strut. |

Boeing Special Attention Service Bulletin 727–32–0338, Revision 4, specifies that where any assembly, lubrication, or corrosion protection procedure in a prior/concurrent service bulletin differs from those in Boeing Special Attention Service Bulletin 727–32–0338, Revision 4, operators should use the procedures in Boeing Special Attention Service Bulletin 727–32–0338, Revision 4.

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

**FAA's Determination and Requirements of the Proposed AD**

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

**Costs of Compliance**

There are about 842 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 459 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with

this proposed AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Cost per airplane | Fleet cost |
|---|---|---|---|---|
| Inspection | 12 | $80 | $960, per inspection cycle | $440,640, per inspection cycle. |
| Prior/concurrent actions | Up to 6 | $80 | Up to $480 | Up to $220,320. |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Boeing:** Docket No. FAA–2007–0227; Directorate Identifier 2007–NM–159–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by January 10, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to all Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category.

**Unsafe Condition**

(d) This AD results from reports of the threads cracking on the main landing gear (MLG) side strut lower segment. We are issuing this AD to prevent a fractured side strut, which could result in collapse of the MLG.

**Compliance**

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

**Inspections and Corrective Actions**

(f) At the latest applicable time in paragraph (f)(1), (f)(2), or (f)(3) of this AD: Do detailed and magnetic particle inspections for cracking or corrosion of the threaded end of the lower segment of the MLG side strut and do all applicable corrective actions as specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 727–32–0338, Revision 4, dated April 7, 2007. Do all applicable corrective actions before further flight. Repeat the inspection thereafter at intervals not to exceed 120 months.

(1) Within 48 months after the last MLG overhaul.

(2) Within 6 months after the effective date of this AD.

(3) Within 120 months after the last MLG overhaul for airplanes on which the actions in Boeing Special Attention Service Bulletin 727–32–0338, Revision 4, dated April 7, 2007, have been accomplished before the effective date of this AD.

**Prior/Concurrent Requirements**

(g) Prior to or concurrently with the actions required by paragraph (f) of this AD: Do all applicable actions specified in the service bulletins listed in Table 1 of this AD. Where the lubrication and corrosion protection procedures in any service bulletin listed in Table 1 of this AD differ from those in Boeing Special Attention Service Bulletin 727–32–0338, Revision 4, dated April 7, 2007, use the procedures in Boeing Special Attention Service Bulletin 727–32–0338, Revision 4.

TABLE 1.—PRIOR/CONCURRENT REQUIREMENTS

| For— | Boeing 727 service bulletin— | Describes procedures for these prior or concurrent actions— |
|---|---|---|
| (1) All airplanes | 727–32–0411, Revision 1, dated February 19, 2007. | Inspecting for corrosion or cracking of the threads and thread relief area of the swivel clevis, and improving the corrosion protection of the swivel clevis fitting threads in commonly affected airplanes. |

TABLE 1.—PRIOR/CONCURRENT REQUIREMENTS—Continued

| For— | Boeing 727 service bulletin— | Describes procedures for these prior or concurrent actions— |
|---|---|---|
| (2) Airplanes specified as Options III, IV and V configurations in Boeing Special Attention Service Bulletin 727–32–0338, Revision 4. | 32–79, Revision 1, dated February 27, 1967 .. | Modifying the MLG side strut universal joint. |
| | 32–157, dated August 30, 1968 ..... | Replacing the MLG side strut swivel bushing, incorporating only Parts Kit 65–89855–1, and not installing the lube fitting in the lower segment. |
| (3) Airplanes specified as Option V configuration in Boeing Special Attention Service Bulletin 727–32–0338, Revision 4. | 727–32–268, Revision 2, dated February 20, 1981. | Inspecting and modifying the MLG side strut. |
| | 727–57–163, dated September 17, 1982 ..... | Resolving the interference between the MLG gear beam and the MLG side strut. |

**Alternative Methods of Compliance (AMOCs)**

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

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

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

Issued in Renton, Washington, on November 13, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–22939 Filed 11–23–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 284

**[Docket No. RM08–1–000]**

## Promotion of a More Efficient Capacity Release Market

November 15, 2007.

**AGENCY:** Federal Energy Regulatory Commission, Department of Energy.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission is proposing revisions to its regulations governing interstate natural gas pipelines to reflect changes in the market for short-term transportation services on pipelines and to improve the efficiency of the Commission's capacity release mechanism. The Commission is proposing to permit market based pricing for short-term capacity releases and to facilitate asset management arrangements by relaxing the Commission's prohibition on tying and on its bidding requirements for certain capacity releases.

**DATES:** Comments are due January 10, 2008.

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

*Agency Web site: http://ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

*Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Robert McLean, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *Robert.McLean@ferc.gov,* (202) 502–8156.

David Maranville, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *David.Maranville@ferc.gov,* (202) 502–6351.

**SUPPLEMENTARY INFORMATION:**

## Notice of Proposed Rulemaking

## Table of Contents



1. In this Notice of Proposed Rulemaking, the Commission proposes to revise its Part 284 regulations

concerning the release of firm capacity by shippers on interstate natural gas pipelines. First, the Commission proposes to remove, on a permanent basis, the rate ceiling on capacity release transactions of one year or less. Second, the Commission proposes to modify its regulations to facilitate the use of asset management arrangements (AMAs), under which a capacity holder releases some or all of its pipeline capacity to an asset manager who agrees to supply the gas needs of the capacity holder. Specifically, the Commission proposes to exempt capacity releases made as part of AMAs from the prohibition on tying and from the bidding requirements of section 284.8. These proposals are designed to enhance competition in the secondary capacity release market and increase shipper options for how they obtain gas supplies.

## I. Background

### *A. The Capacity Release Program*

2. The Commission adopted its capacity release program as part of the restructuring of natural gas pipelines required by Order No. 636.[1] In Order No. 636, the Commission sought to foster two primary goals. The first goal was to ensure that all shippers have meaningful access to the pipeline transportation grid so that willing buyers and sellers can meet in a competitive, national market to transact the most efficient deals possible. The second goal was to ensure consumers have ''access to an adequate supply of gas at a reasonable price.'' [2]

3. To accomplish these goals, the Commission sought to maximize the availability of unbundled firm transportation service to all participants in the gas commodity market. The linchpin of Order No. 636 was the requirement that pipelines unbundle their transportation and storage services from their sales service, so that gas purchasers could obtain the same high quality firm transportation service whether they purchased from the pipeline or another gas seller. In order to create a transparent program for the reallocation of interstate pipeline capacity to complement the unbundled, open access environment created by Order No. 636, the Commission also adopted a comprehensive capacity release program to increase the availability of unbundled firm transportation capacity by permitting firm shippers to release their capacity to others when they were not using it.[3]

4. The Commission reasoned that the capacity release program would promote efficient load management by the pipeline and its customers and would, therefore, result in the efficient use of firm pipeline capacity throughout the year. It further concluded that, ''because more buyers will be able to reach more sellers through firm transportation capacity, capacity reallocation comports with the goal of improving nondiscriminatory, open access transportation to maximize the benefits of the decontrol of natural gas at the wellhead and in the field.'' [4]

5. In Order No. 636, the Commission expressed concerns regarding its ability to ensure that firm shippers would reallocate their capacity in a non-discriminatory manner to those who placed the highest value on the capacity up to the maximum rate. The Commission noted that prior to Order No. 636, it authorized some pipelines to permit their shippers to ''broker'' their capacity to others. Under such capacity brokering, firm shippers were permitted to assign their capacity directly to a replacement shipper, without any requirement that the brokering shipper post the availability of its capacity or allocate it to the highest bidder.[5] However, in Order No. 636, the Commission found ''there [were] too many potential assignors of capacity and too many different programs for the Commission to oversee capacity brokering.'' [6]

6. The Commission sought to ensure that the efficiencies of the secondary market were not frustrated by unduly discriminatory access to the market.[7] Therefore, the Commission replaced capacity brokering with the capacity release program designed to provide greater assurance that transfers of capacity from one shipper to another were transparent and not unduly discriminatory. This assurance took the form of several conditions that the Commission placed on the transfer of capacity under its new program.

7. First, the Commission prohibited private transfers of capacity between shippers and, instead, required that all release transactions be conducted through the pipeline. Therefore, when a releasing shipper releases its capacity, the replacement shipper must enter into a contract directly with the pipeline, and the pipeline must post information regarding the contract, including any special conditions.[8] In order to enforce the prohibition on private transfers of capacity, the Commission required that a shipper must have title to any gas that it ships on the pipeline.[9]

8. Second, the Commission determined that the record of the proceeding that led to Order No. 636 did not reflect that the market for released capacity was competitive. The Commission reasoned that the extent of competition in the secondary market may not be sufficient to ensure that the rates for released capacity will be just and reasonable. Therefore, the Commission imposed a ceiling on the rate that the releasing shipper could charge for the released capacity.[10] This ceiling was derived from the Commission's estimate of the maximum rates necessary for the pipeline to

[1] *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, 57 FR 13,267 (April 16, 1992), FERC Stats. and Regs., Regulations Preambles January 1991–June 1996 ¶ 30,939 (April 8, 1992); *order on reh'g*, Order No. 636–A, 57 FR 36,128 (August 12, 1002), FERC Stats. and Regs., Regulations Preambles January 1991–June 1996 ¶ 30,950 (August 3, 1992); *order on reh'g*, Order No. 636–B, 57 FR 57,911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (1992); *notice of denial of reh'g*, 62 FERC ¶ 61,007 (1993); *aff'd in part, vacated and remanded in part, United Dist. Companies* v. *FERC*, 88 F.3d 1105 (D.C. Cir. 1996); *order on remand*, Order No. 636–C, 78 FERC ¶ 61,186 (1997).

[2] Order No. 636 at 30,393 (citations omitted).

[3] In brief, under the Commission's capacity release program, a firm shipper (releasing shipper) sells its capacity by returning its capacity to the pipeline for reassignment to the buyer (replacement shipper). The pipeline contracts with, and receives payment from, the replacement shipper and then issues a credit to the releasing shipper. The replacement shipper may pay less than the pipeline's maximum tariff rate, but not more. 18 CFR 284.8(e) (2007). The results of all releases are posted by the pipeline on its Internet Web site and made available through standardized, downloadable files.

[4] Order No. 636 at 30,418.

[5] *See Algonquin Gas Transmission Corp.*, 59 FERC ¶ 61,032 (1992).

[6] Order No. 636 at 30,416.

[7] Order No. 636–A at 30,554.

[8] Order No. 636 emphasized:

The main difference between capacity brokering as it now exists and the new capacity release program is that under capacity brokering, the brokering customer could enter into and execute its own deals without involving the pipeline. Under capacity releasing, all offers *must* be put on the pipeline's electronic bulletin board and contracting is done directly with the pipeline. Order No. 636 at 30, 420 (emphasis in original).

[9] As the Commission subsequently explained in Order No. 637, ''the capacity release rules were designed with [the shipper-must-have-title] policy as their foundation,'' because, without this requirement, ''capacity holders could simply transport gas over the pipeline for another entity.'' *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091 at 31,300, *clarified*, Order No. 637–A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied*, Order No. 637–B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America* v. *FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n* v. *FERC*, 428 F.3d 255 (D.C. Cir. 2005). *See* section V below for a further explanation of the shipper-must-have-title requirement.

[10] Order No. 636 at 30,418; Order No. 636–A at 30,560.

recover its annual cost-of-service revenue requirement, which the Commission prorated over the period of each release.[11]

9. Third, the Commission required that capacity offered for release at less than the maximum rate must be posted for bidding, and the pipeline must allocate the capacity ''to the person offering the highest rate (not over the maximum rate).'' [12] The Commission permitted the releasing shipper to choose a pre-arranged replacement shipper who can retain the capacity by matching the highest bid rate. The bidding requirement, however, does not apply to releases of 31 days or less or to any release at the maximum rate. But all releases, whether or not subject to bidding, must be posted.[13]

10. Finally, the Commission prohibited tying the release of capacity to any extraneous conditions so that the releasing shippers could not attempt to add additional terms or conditions to the release of capacity. The Commission articulated the prohibition against the tying of capacity in Order No. 636–A, where it stated:

> The Commission reiterates that *all* terms and conditions for capacity release must be posted and non-discriminatory and must relate solely to the details of acquiring transportation on the interstate pipelines. Release of capacity cannot be tied to any other conditions. Moreover, the Commission will not tolerate deals undertaken to avoid the notice requirements of the regulations. Order No. 636–A at 30, 559 (emphasis in the original).

11. Subsequent to the Commission's adoption of its capacity release program in Order No. 636, the Commission conducted two experimental programs to provide more flexibility in the capacity release market. In 1996, the Commission sought to establish an experimental program inviting individual shipper and pipeline applications to remove price ceilings related to capacity release.[14] The Commission recognized that significant benefits could be realized through removal of the price ceiling in a competitive secondary market. Removal of the ceiling permits more efficient capacity utilization by permitting prices to rise to market clearing levels and by permitting those who place the highest value on the capacity to obtain it.[15]

12. In 2000, in Order No. 637, the Commission conducted a broader experiment in which the Commission removed the rate ceiling for short-term (less than one year) capacity release transactions for a two-year period ending September 30, 2002. In contrast to the experiment that it conducted in 1996, in the Order No. 637 experiment the Commission granted blanket authorization in order to permit all firm shippers on all open access pipelines to participate. The Commission stated that it undertook this experiment to improve shipper options and market efficiency during peak periods. The Commission reasoned that during peak periods, the maximum rate cap on capacity release transactions inhibits the creation of an effective transportation market by preventing capacity from going to those that value it the most and therefore the elimination of this rate ceiling would eliminate this inefficiency and enhance shipper options in the short-term marketplace.[16]

13. Upon an examination of pricing data on basis differentials between points,[17] the Commission found that the price ceiling on capacity release transactions limited the capacity options of short-term shippers because firm capacity holders were able to avoid price ceilings on released capacity by substituting bundled sales transactions at market prices (where the market place value of transportation is an implicit component of the delivered price). As a consequence, the Commission determined that the price ceilings did not limit the prices paid by shippers in the short-term market as much as the ceilings limit transportation options for shippers. In short, the Commission found that the rate ceiling worked against the interests of short-term shippers, because with the rate ceilings in place, a shipper looking for short-term capacity on a peak day who was willing to offer a higher price in order to obtain it, could not legally do so; this reduced its options for procuring short-term transportation at the times that it needed it most.[18] Throughout this experiment, the Commission retained the rate ceiling for firm and interruptible capacity available from the pipeline as well as long-term capacity release transactions.

14. On April 5, 2002, the United States Court of Appeals for the District of Columbia Circuit, in *Interstate Natural Gas Association of America* v. *FERC*,[19] upheld the Commission's experimental price ceiling program for short-term capacity release transactions as set forth in Order No. 637.[20] The court found that the Commission's ''light handed'' approach to the regulation of capacity release prices was, given the safeguards that the Commission had imposed, consistent with the criteria set forth in *Farmers Union Cent. Exch.* v. *FERC*.[21] The court found that the Commission made a substantial record for the proposition that market rates would not materially exceed the ''zone of reasonableness'' required by *Farmers Union*. The court also found that the Commission's inference of competition in the capacity release market was well founded, that the price spikes shown in the Commission's data were consistent with competition and reflected scarcity of supply rather than monopoly power, and that outside of such price spikes, the rates were well below the estimated regulated price.[22]

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[11] Order No. 637 at 31,270–71.

[12] 18 CFR §284.8(e) (2007) provides in pertinent part that ''[t]he pipeline must allocate released capacity to the person offering the highest rate (not over the maximum rate) and offering to meet any other terms or conditions of the release.''

[13] 18 CFR § 284.8(h)(1) provides that a release of capacity for less than 31 days, or for any term at the maximum rate, need not comply with certain notification and bidding requirements, but that such release may not exceed the maximum rate. Notice of the release ''must be provided on the pipeline's electronic bulletin board as soon as possible, but not later than forty-eight hours, after the release transaction commences.''

[14] *Secondary Market Transactions on Interstate Natural Gas Pipelines, Proposed Experimental Pilot Program to Relax the Price Cap for Secondary Market Transactions*, 61 FR 41401 (Aug. 8, 1996), 76 FERC ¶ 61,120, *order on reh'g*, 77 FERC ¶ 61,183 (1996).

[15] 77 FERC ¶ 61,183 (1996) at 61,699.

[16] Order No. 637 at 31,263. The Commission also explained why it was lifting the price cap on an experimental basis, instead of permanently, stating:

> While the removal of the price cap is justified based on the record in this rulemaking, the Commission recognizes that this is a significant regulatory change that should be subject to ongoing review by the Commission and the industry. No matter how good the data suggesting that a regulatory change should be made, there is no substitute for reviewing the actual results of a regulatory action. The two year waiver will provide an opportunity for such a review after sufficient information is obtained to validly assess the results. Due to the variation between years in winter temperatures, the waiver will provide the Commission and the industry with two winter's worth of data with which to examine the effects of this policy change and determine whether changes or modifications may be needed prior to the expiration of the waiver. Order No. 637 at 31,279.

[17] Among other things, the data showed that the value of pipeline capacity, as shown by basis differentials, was generally less than the pipelines' maximum interruptible transportation rates, except during the coldest days of the year, and capacity release prices also averaged somewhat less than pipelines' maximum interruptible rates.

[18] Order No. 637 at 31,282.

[19] 285 F.3d 18 (D.C. Cir. 2002) (*INGAA*).

[20] Specifically, the court found that: ''[g]iven the substantial showing that in this context competition has every reasonable prospect of preventing seriously monopolistic pricing, together with the non-cost advantages cited by the Commission and the experimental nature of this particular ''lighthanded'' regulation, we find the Commission's decision neither a violation of the NGA, nor arbitrary or capricious.'' *INGAA* at 35.

[21] 734 F.2d 1486 (D.C. Cir. 1984) (*Farmers Union*).

[22] *Id.* at 33.

*B. Petitions and Industry Comments*

15. In August 2006, Pacific Gas and Electric Co. (PG&E) and Southwest Gas Corp. (Southwest) filed a petition requesting the Commission to amend sections 284.8(e) and (h)(1) of its regulations to remove the maximum rate cap on capacity release transactions.[23] They stated that removing the price ceiling would improve the efficiency of the capacity market by giving releasing shippers a greater incentive to release their capacity during periods of constraint. They asserted that this would allow shippers who value the capacity the most to obtain it, provide more accurate price signals concerning the value of capacity, and provide greater potential cost mitigation to holders of long-term firm capacity. They also pointed out that the Commission now permits pipelines to negotiate rates with individual customers using basis differentials (*i.e.*, the difference between natural gas commodity prices at two trading points, such as a supply basin and a city gate delivery point) and such negotiated rates may exceed the pipeline's recourse maximum rate. PG&E and Southwest assert that releasing shippers must have greater pricing flexibility in order to compete with such negotiated rate deals offered by the pipelines.

16. In October 2006, a group of large natural gas marketers [24] (Marketer Petitioners) requested clarification of the operation of the Commission's capacity release rules in the context of asset (or portfolio) management services.[25] An AMA is an agreement under which a capacity holder releases, on a pre-arranged basis, all or some of its pipeline capacity, along with associated gas purchase contracts, to an asset or portfolio manager. The asset manager uses the capacity to satisfy the gas supply needs of the releasing shipper, and, when the capacity is not needed to serve the releasing shipper, the asset manager uses it to make gas sales or re-releases the capacity to third parties.

17. The Marketer Petitioners state that Order No. 636 adopted the capacity release program as a means for shippers to transfer unneeded capacity to other entities who desired it. However, the Marketer Petitioners state, today many local distribution companies (LDCs) and others desire to release their capacity to a replacement shipper (asset manager) with greater market expertise, who will continue to use the capacity to provide gas supplies to the releasing shipper and will be better able to maximize the value of the released capacity when it is not needed to serve the releasing shipper. The Marketer Petitioners state that the Commission's current capacity release rules may interfere with marketers providing efficient asset management services. They also assert that they are not seeking to remove the capacity release rate cap, but acknowledge that if the Commission took such action, it would eliminate some of their problems.

18. On January 3, 2007, the Commission issued a request for comments on the current operation of the Commission's capacity release program and whether changes in any of its capacity release policies would improve the efficiency of the natural gas market.[26] The Commission's request for comments was in part in response to the petitions discussed above. In addition to the issues raised by the petitions, the Commission also included in its request for comments a series of questions asking whether the Commission should lift the price ceiling, remove its capacity release bidding requirements, modify its prohibition on tying arrangements, and/or remove the shipper-must-have-title requirement.

19. In response to the price ceiling issues, commenting LDCs and pipelines both advocate lifting the ceiling, subject to different conditions. The LDCs favor lifting the ceiling only if it would still apply to the pipeline's direct sales of capacity because, among other things, the pipelines have negotiated rate authority that is not available to releasing shippers.[27] The pipelines advocate the removal of the cap only if the Commission removes the cap from the entire capacity marketplace; otherwise, they argue, it will create a bifurcated market and an uneven playing field.

20. Producers and industrial customers generally oppose lifting the price ceiling on a permanent basis, arguing that the Commission must first develop new data to support such action and that it cannot rely on the results of the Order No. 637 experiment that terminated five years ago. Certain producers, however, would countenance a new experiment conducted by the Commission to gather new data related to the lifting of the price ceiling. Additionally, certain marketers and the American Public Gas Association (APGA) argue that the Commission cannot remove the ceiling unless there is a finding of lack of market power.

21. In response to the request for comments on whether the Commission should consider adjusting the capacity release regulations to foster AMAs, numerous commenters responded that AMAs are beneficial to the market place and that the Commission should do something to facilitate their use. A vast majority of the commenters assert that AMAs provide substantial benefits, including more load responsive use of gas supply, greater liquidity, increased use of transportation capacity, cost effective procurement vehicles for LDCs and other end users, and the enhancement of competition. They state that AMAs also relieve LDCs from management of their daily gas supply and capacity needs. Others comment that AMAs benefit all parties involved: The releasing shipper reduces its costs through use of its capacity entitlements to facilitate third party sales; the third parties benefit from receiving a bundled product at an acceptable price; and the asset manager receives whatever profits are not passed on to the releasing shipper.

22. In particular, the Marketer Petitioners and other commenters request that the Commission clarify that the different payments made between parties in an AMA do not constitute prohibited above maximum rate transactions or below maximum rate transactions that thus require posting and bidding. They also request that the Commission revisit its prohibition on tying to allow the packaging of gas supply contracts and pipeline or storage capacity, or multiple segments of capacity, as part of an AMA. Certain commenters also suggest changes to the Commission's notice and bidding requirements for capacity releases. A number of LDCs and marketers request that the bidding requirement be eliminated altogether or that the regulations be revised to eliminate

[23] Docket No. RM06–21–000. PG&E subsequently clarified that it only seeks removal of the price cap for capacity releases of less than a year.

[24] Coral Energy Resources, LP; ConocoPhillips Co.; Chevron USA, Inc.; Constellation Energy Commodities Group, Inc.; Tenaska Marketing Ventures; Merrill Lynch Commodities, Inc.; Nexen Marketing USA, Inc.; and UBS Energy LLC.

[25] The Marketer Petitioners originally filed their petition in Docket Nos. RM91–11–009 and RM98–10–013. However, the Commission has re-docketed the petition in Docket No. RM07–4–000.

[26] *Pacific Gas & Electric Co.*, 118 FERC ¶ 61,005 (2007).

[27] Under the negotiated rate program, a pipeline may charge rates different from those set forth in its open access tariff, as long as the shipper has recourse to taking service at the maximum tariff rate. *See, Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076, *reh'g denied*, 75 FERC ¶ 61,024 (1996), *petitions for review denied sub nom., Burlington Resources Oil & Gas Co.* v. *FERC*, 172 F.3d 918 (D.C. Cir. 1998). *See also Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, dismissing reh'g and denying clarification, 114 FERC ¶ 61,304 (2006).

bidding for capacity releases made to implement an AMA.

**II. Removal of Maximum Rate Ceiling for Short-Term Capacity Release**

23. Based upon its review of the petitions, comments and available data, the Commission proposes to lift the price ceiling for short-term capacity release transactions of one year or less. The Commission's capacity release program has created a successful secondary market for capacity.[28] Commenters from disparate segments of the natural gas industry agree that the capacity release program has been beneficial to the industry in creating a competitive secondary market for natural gas transportation.[29]

24. As the comments point out, shippers and potential shippers are looking for greater flexibility in the use of capacity. They seek to better integrate capacity with the underlying gas transactions, and are looking for more flexible methods of pricing capacity to better reflect the value of that capacity as revealed by the market price of gas at different trading points. Pipelines, for example, have been using their negotiated rate authority to sell their own capacity based on market-derived basis differentials reflective of the difference in gas prices between two points. The Commission recently clarified that pipelines may use such basis differential pricing as a part of negotiated rate transactions even when those prices exceed maximum tariff rates.[30] Under the Commission's regulations, releasing shippers also may enter into capacity release transactions based on basis differentials, but such releases cannot exceed the maximum rate.[31] In their comments, releasing shippers request the ability to release at above the maximum rate so that they may offer potential buyers rates competitive with pipeline negotiated rate transactions.[32]

25. As the Commission recognized in Order No. 637,[33] the traditional cost-of-service price ceilings in pipeline tariffs, which are based on average yearly rates, are not well suited to the short-term capacity release market.[34] Removal of the price ceiling will enable releasing shippers to offer competitively-priced alternatives to the pipelines' negotiated rate offerings. Removal of the ceiling also permits more efficient utilization of capacity by permitting prices to rise to market clearing levels, thereby permitting those who place the highest value on the capacity to obtain it. Removal of the price ceiling also will provide potential customers with additional opportunities to acquire capacity. The price ceiling reduces the firm capacity holders' incentive to release capacity during times of scarcity, because they cannot obtain the market value of the capacity.

26. Further, the elimination of the price ceiling for short-term capacity releases will provide more accurate price signals concerning the market value of pipeline capacity. More accurate price signals will promote the efficient construction of new capacity by highlighting the location, frequency, and severity of transportation constraints. Correct capacity pricing information will also provide transparent market values that will better enable pipelines and their lenders to calculate the potential profitability and associated risk of additional construction designed to alleviate transportation constraints.

27. Moreover, removing the price ceiling on short-term capacity releases should not harm, and may benefit, the ''primary intended beneficiaries of the NGA—the 'captive' shippers.'' [35] Those shippers typically have long-term firm contracts with the pipeline, and therefore will ''continue to receive whatever benefits the rate ceilings generally provide,'' while also ''reaping the benefits of [the] new rule, in the form of higher payments for their releases of surplus capacity.'' [36]

28. As the court stated in *INGAA*, the Commission may depart from cost of service ratemaking upon:

> A showing that * * * the goals and purposes of the statute will be accomplished 'through the proposed changes.' To satisfy that standard, we demanded that the resulting rates be expected to fall within a 'zone of reasonableness, where [they] are neither less than compensatory nor excessive.' [citation omitted]. While the expected rates' proximity to cost was a starting point for this inquiry into reasonableness, [citation omitted], we were quite explicit that 'non-cost factors may legitimate a departure from a rigid cost-based approach,' [citation omitted]. Finally, we said that FERC must retain some general oversight over the system, to see if competition in fact drives rates into the zone of reasonableness 'or to check rates if it does not.' [37]

29. Many of the changes effected in Order Nos. 636 and 637 have enhanced competition between releasing shippers as well as between releasing shippers and the pipeline. As discussed below, the data obtained by the Commission both during the Order No. 637 experiment and more recently confirms the finding made in Order No. 637 that short-term release prices are reflective of market prices as revealed by basis differentials, rather than reflecting the exercise of market power. Moreover, shippers purchasing capacity will be adequately protected because the pipeline's firm and interruptible services will provide just and reasonable recourse rates limiting the ability of releasing shippers to exercise market power. Finally, the reporting requirements in Order No. 637 and the Commission's implementation of the Energy Policy Act of 2005, specifically with respect to market manipulation, provide the Commission with enhanced ability to monitor the market and detect and deter abuses.

**A. Policies Enhancing Competition**

30. In Order No. 636 and, as expanded in Order No. 637, the Commission instituted a number of policy revisions designed to enhance competition and improve efficiency across the pipeline grid. These revisions provide shippers with enhanced market mechanisms that will help ensure a more competitive market and mitigate the potential for the exercise of market power.

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[28] As the Commission observed in 2005, the ''capacity release program together with the Commission's policies on segmentation, and flexible point rights, has been successful in creating a robust secondary market where pipelines must compete on price.'' *Policy for Selective Discounting by Natural Gas Pipelines*, 111 FERC ¶ 61,309 at P 39–41) (2005), *order on reh'g*, 113 FERC ¶ 61,173 (2005).

[29] *See e.g.*, PG&E and Southwest Gas Petition at 10 (''There is reason to believe that the secondary market is more competitive today than it was six years ago.''); Market Petitioners at 3 (''The Commission's capacity release program has proven to be a critical initiative in opening U.S. natural gas markets to competition.''); AGA Comments at 3 (''The Commission's regulations have permitted the development of an open and active secondary market for pipeline capacity that has provided significant benefits to natural gas consumers.''); *INGAA* Comments at 12 (''The current market for short-term transportation capacity is large and highly competitive.''); and NGSA Comments at 2 (''The basic structure of the Commission's policies is still providing the benefits intended of transparent, nondiscriminatory, efficient allocation of capacity.'').

[30] *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

[31] *See Standards for Business Practices for Interstate Natural Gas Pipelines and for Public Utilities*, Order No. 698, 72 FR 38757 (July 16, 2007), FERC Stats. & Regs. ¶ 31,251 (June 25, 2007).

[32] *See, e.g.*, PG&E and Southwest Gas Petition at 10–11.

[33] Order No. 637 at 31,271–75.

[34] While the Commission offered pipelines the opportunity to propose other types of rate designs, such as seasonal and term-differentiated rates, only a very few pipelines have sought to make such rate design changes, although virtually all pipelines have taken advantage of negotiated rate authority.

[35] *INGAA* at 33.

[36] *Id.*

[37] *Id.* at 31.

31. The Commission required pipelines to permit releasing shippers to use flexible point rights and to fully segment their pipeline capacity. Flexible point rights enable shippers to use any points within their capacity path on a secondary basis, which enables shippers to compete effectively on release transactions with other shippers. Segmentation further enhances the ability to compete because it enables the releasing shipper to retain the portion of the pipeline capacity it needs while releasing the unneeded portion. Effective segmentation will make more capacity available and enhance competition. As the Commission explained in Order No. 637:

The combination of flexible point rights and segmentation increases the alternatives available to shippers looking for capacity. In the example,[38] a shipper in Atlanta looking for capacity has multiple choices. It can purchase available capacity from the pipeline. It can obtain capacity from a shipper with firm delivery rights at Atlanta or from any shipper with delivery point rights downstream of Atlanta. The ability to segment capacity enhances options further. The shipper in New York does not have to forgo deliveries of gas to New York in order to release capacity to the shipper seeking to deliver gas in Atlanta. The New York shipper can both sell capacity to the shipper in Atlanta and retain the right to inject gas downstream of Atlanta to serve its New York market.[39]

32. In addition to enhancing competition through expansion of flexible point rights and segmentation, the Commission in Order No. 637 also required pipelines to provide shippers with scheduling equal to that provided by the pipeline, so that replacement shippers can submit a nomination at the first available opportunity after consummation of the capacity release transaction. The change makes capacity release more competitive with pipeline services and increases competition between capacity releasers by enabling replacement shippers to schedule the use of capacity obtained through release transactions quickly rather than having to wait until the next day.

*B. Data on Capacity Release Transactions*

33. The data accumulated by the Commission during the Order No. 637 experiment, as well as review of more recent data, show that capacity release prices reflect competitive conditions in the industry. On May 30, 2002, the Commission issued a notice of staff paper presenting data on capacity release transactions during the experimental period when the capacity release ceiling price was waived.[40] The staff paper provided analysis of capacity release transactions on 34 pipelines during the 22-month period from March 2000 to December 2001.[41]

34. In brief, the data gathered during the 33-month period show that without the price ceiling, prices exceeded the maximum rate only during short time periods and appear to be reflective of competitive conditions in the industry. The following table shows the distribution of above ceiling price releases among the pipelines studied.

TABLE I.—ABOVE CAP RELEASES BY PIPELINE

[Releases awarded between March 26, 2000 and December 31, 2001]

| Pipeline | Releases above max rate (Number of transactions) | % of total releases | Releases quantity above max rate (MMBtu/day) | % of total release quantity |
|---|---|---|---|---|
| Algonquin | 1 | 0.1 | 18,453 | 0.2 |
| ANR Pipeline | 1 | 0.1 | 30,000 | 0.2 |
| CIG | 19 | 6.5 | 109,984 | 4.4 |
| Dominion (CNGT) | 21 | 1.0 | 65,789 | 0.7 |
| Columbia Gas | 101 | 4.4 | 374,727 | 2.7 |
| Columbia Gulf | | | | |
| East Tennessee | | | | |
| El Paso | 135 | 13.3 | 631,683 | 12.5 |
| Florida Gas | 25 | 1.7 | 43,526 | 1.4 |
| Great Lakes | 3 | 1.3 | 15,000 | 0.6 |
| Iroquois | | | | |
| Kern River | 2 | 3.9 | 55,000 | 2.5 |
| KMI (KNEnergy) | 3 | 1.0 | 1,409 | 0.0 |
| Gulf South (Koch) | | | | |
| Midwestern | 1 | 0.6 | 50,000 | 2.3 |
| Mississippi River | | | | |
| Mojave Pipeline Co | 1 | 2.6 | 40,000 | 4.7 |
| Natural Gas Pipeline Co | 16 | 3.2 | 270,489 | 2.3 |
| Reliant (Noram) | | | | |
| Northern Border | | | | |
| Northern Natural | 12 | 1.6 | 23,273 | 0.5 |
| Northwest Pipeline | 24 | 1.8 | 139,850 | 4.1 |
| Paiute Pipeline | | | | |
| Panhandle Eastern | 1 | 0.4 | 1,000 | 0.1 |
| Southern Natural | 7 | 0.3 | 24,101 | 0.2 |
| Tennessee Gas | 11 | 0.4 | 36,421 | 0.2 |
| TETCO | 122 | 3.8 | 645,856 | 3.3 |

[38] In the example used in Order No. 636, a shipper holding firm capacity from a primary receipt point in the Gulf of Mexico to primary delivery points in New York could release that capacity to a replacement shipper moving gas from the Gulf to Atlanta while the New York releasing shipper could inject gas downstream of Atlanta and use the remainder of the capacity to deliver the gas to New York.

[39] Order No. 637 at 31,300.

[40] On May 30, 2002, a Staff Paper was posted on the Commission's *Web site* presenting, and analyzing data on capacity release transactions relating to the experimental period when the rate ceiling on short-term released capacity was waived.

[41] Many of these release transactions would have occurred prior to completion of the pipeline's Order No. 637 compliance proceedings and the implementation of the changes to flexible point rights, segmentation and scheduling described above.

TABLE I.—ABOVE CAP RELEASES BY PIPELINE—Continued

[Releases awarded between March 26, 2000 and December 31, 2001]

| Pipeline | Releases above max rate (Number of transactions) | % of total releases | Releases quantity above max rate (MMBtu/day) | % of total release quantity |
|---|---|---|---|---|
| Texas Gas | 6 | 0.5 | 103,237 | 1.0 |
| Trailblazer | 3 | 25.0 | 15,000 | 10.0 |
| Transco | 183 | 3.3 | 1,540,885 | 4.1 |
| Transwestern | 11 | 4.5 | 64,058 | 6.5 |
| Trunkline | | | | |
| Williams | 4 | 0.4 | 16,500 | 0.3 |
| Williston Basin | | | | |
| Total | 713 | 2.2 | 4,316,241 | 2.1 |

35. These data show that during periods without capacity constraints, prices remained at or below the maximum rate. The staff paper does identify 713 releases above the ceiling price, representing an average total capacity release contract volume of 4.3 billion cubic feet (Bcf) per day. However, the staff paper reflects that these above-ceiling price releases represented only a small portion of the total releases on these pipelines, comprising approximately two percent of total transactions on the pipelines studied for the entire period, and two percent of gas volumes. Further, above ceiling releases accounted for no more than six or seven percent of transactions during any given month of the period. As one would expect, the percentages of releases occurring above the ceiling increased during peak periods. However, average release rates were higher by only one cent per MMBtu per day or five and one-half percent higher than they would have been with the price ceiling in place. Of the 34 pipelines in the study, 10 reported no releases above the ceiling price, and 20 pipelines reported fewer than 25 above-ceiling price releases. The data gathered during this 22-month period reflects the Commission's expectations and affirms the Commission's findings in the Order No. 637 proceeding. As the court stated in *INGAA*:

> The data represented in the graph [] do support the Commission's view that the capacity release market enjoys considerable competition. The brief spikes in moments of extreme exigency are completely consistent with competition, reflecting scarcity rather than monopoly. * * * [citation omitted] A surge in the price of candles during a power outage is no evidence of monopoly in the candle market.[42]

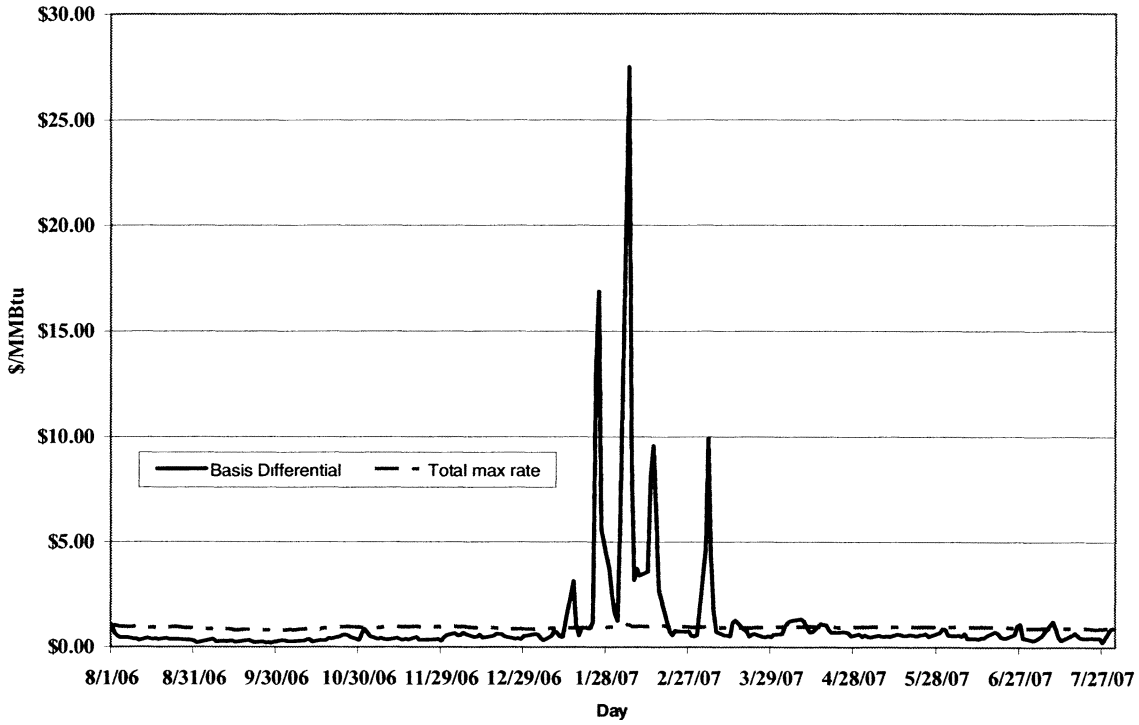
36. Several commenters argue that the data gathered by the Commission is too stale to support the instant proposal to remove the price ceiling on short-term capacity releases. However, these commenters fail to produce any evidence to support specific concerns existing today that did not exist during the experimental period. Moreover, the Commission has gathered additional current data and has replicated the evidence presented in Order No. 637. The current data shows that the conditions that existed at the time of Order No. 637 and during the past experimental period continue in today's marketplace.

37. Figure 1 illustrates the fluctuations in the market value of transportation service, as shown by the basis differentials between Louisiana and New York City. This graph compares the daily difference in gas prices between Louisiana and New York City to Transcontinental Gas Pipe Line Corporation's maximum interruptible transportation rate, including fuel retainage, during the 12 months ending July 31, 2007. This graph shows that for most of the year, the value of transportation service, as indicated by the basis differentials, is less than the maximum transportation rate. However, during brief, peak demand periods, the value of transportation service is measurably greater than the maximum transportation rate. For example, on February 5, 2007, the basis differential between Louisiana and New York City was in excess of $27.00 per MMBtu, while the maximum tariff rate plus the cost of fuel was approximately $1.08 per MMBtu.[43]

[42] *INGAA* at 32.

[43] In Order No. 637, the Commission presented similar data in figure 6 showing the implicit transportation value between South Louisiana and Chicago. Order No. 637 at 31,274.

**Figure 1 -- Daily Gas Price Differentials Louisiana to New York (12 Months Ending July 2007)**




38. Figures 2 and 3 below reflect that a similar pattern of transportation value is evident in other areas of the country. Focusing on fluctuations in the market value of transportation service as shown by basis differentials between Louisiana and Chicago and between the Permian Basin and the California border, respectively, these figures show that for most of the year, the value of transportation service is less than the maximum transportation rate of Natural Gas Pipeline Company of America and El Paso Natural Gas Company, respectively. However, similar to figure 1, these figures also reflect that during brief, peak-demand periods, the value of transportation service is measurably greater than the maximum transportation rate.

**Figure 2 -- Gas Price Differentials NGPL La. To Chicago**

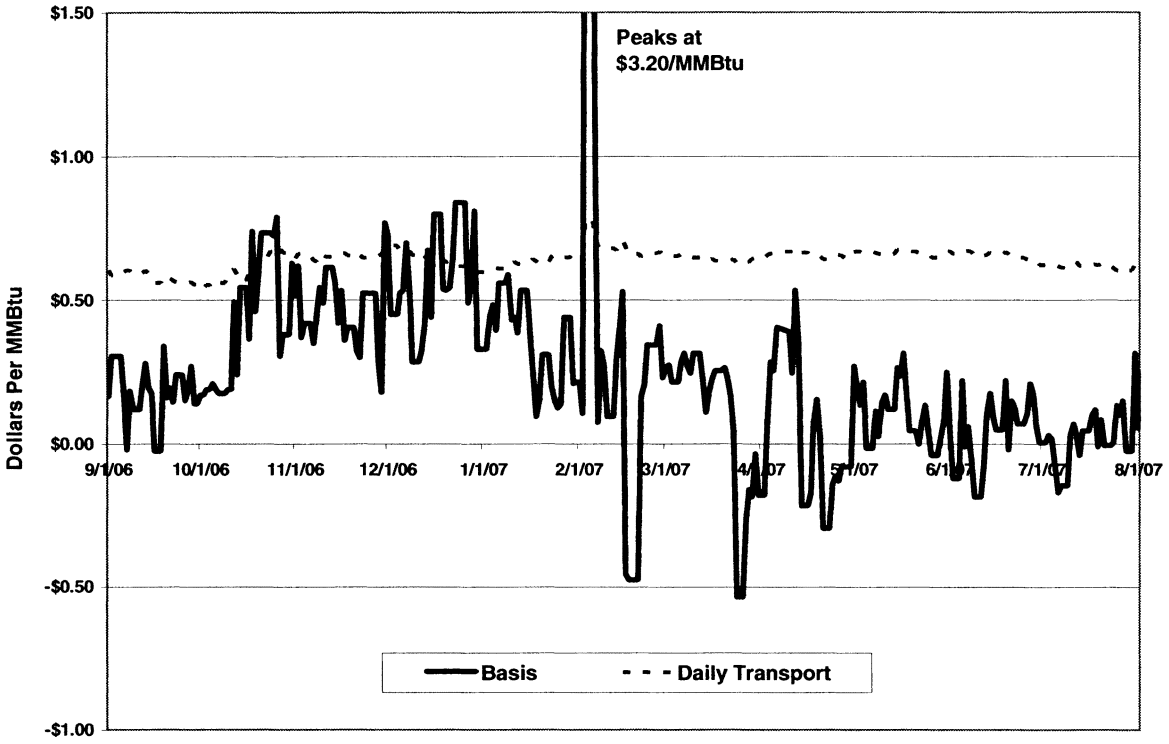
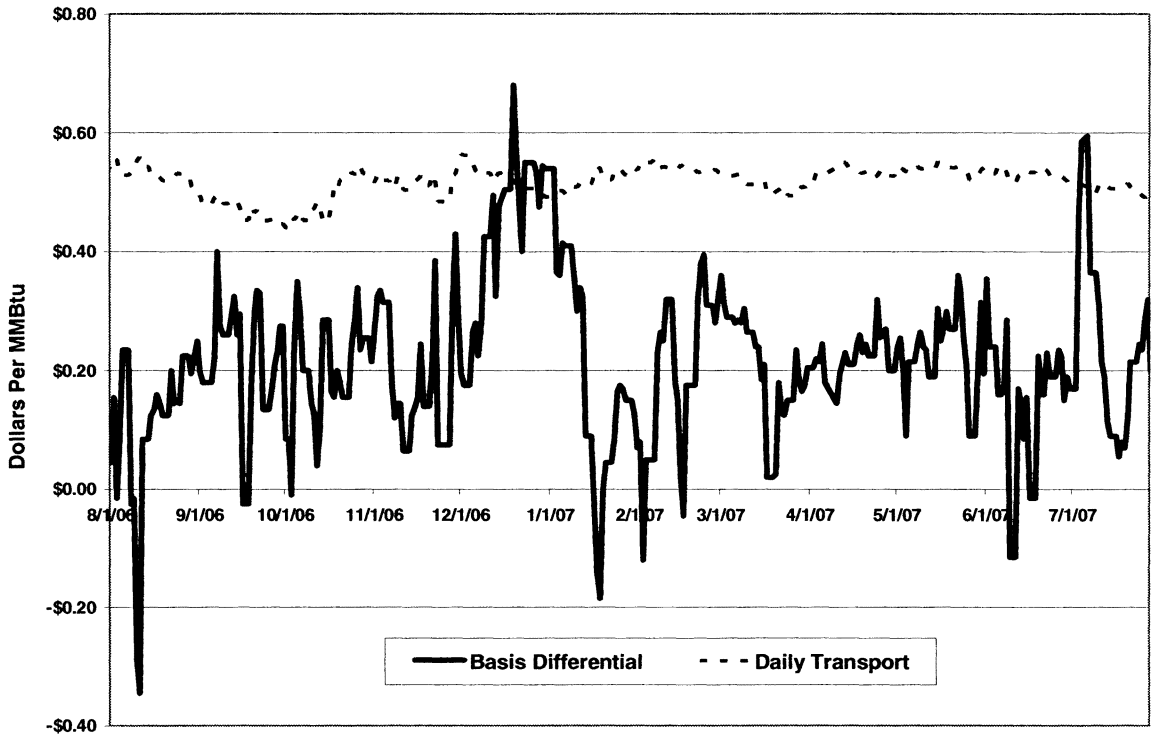



**Figure 3 -- Gas Price Differentials for Permian Basin to California Border (SoCal Gas)**



39. The data in all three of the above figures reflect similar market conditions to the data that the Commission relied upon in lifting the price ceiling for short-term capacity releases in Order No. 637, with the market value of capacity generally below the pipeline's maximum rate except for relatively brief price spikes.[44] In affirming the Commission's actions, the court in *INGAA* found that the data presented by the Commission constituted a substantial basis for the conclusion that a considerable amount of competition existed in the capacity release market. Further, the *INGAA* court concluded that the price spikes reflected in the data were consistent with competition and that such spikes reflected scarcity rather than monopoly. [45]

*C. Available Pipeline Service Constrains Market Power Abuses*

40. The Commission envisions that under the instant proposal the pipeline's open access transportation maximum tariff rates (recourse rates) will serve as additional protection against possible abuses of market power by releasing shippers. The Commission requires pipelines to sell all their available capacity to shippers willing to pay the pipeline's maximum recourse rate.[46] Under their negotiated rate authority, pipelines are free to negotiate individualized rates with particular shippers that may be above the maximum tariff rate, subject to several conditions including the availability of the maximum tariff rate as a recourse rate for potential firm shippers.[47] As the Commission explained in its negotiated rate policy statement, ''[t]he availability of a recourse service would prevent pipelines from exercising market power by assuring that the customer can fall back to traditional cost-based service if the pipeline unilaterally demands excessive prices or withholds service.'' [48]

41. The court in *INGAA* recognized the value of the pipeline's recourse rate protecting against possible abuses of market power by releasing shippers stating that,

> [i]f holders of firm capacity do not use or sell all of their entitlement, the pipelines are required to sell the idle capacity as interruptible service to any taker at no more than the maximum rate—which is still applicable to the pipelines.[49]

Removing the price ceiling for short-term capacity release transactions will enable releasing shippers to offer negotiated rate transactions similar to those offered by the pipelines. Moreover, the same pipeline open access service will protect against the possibility that a releasing shipper will attempt to exercise market power by withholding capacity. For example, should a releasing shipper attempt to charge a price above competitive levels, the potential purchaser could seek to negotiate a more acceptable rate with the pipeline. Even when the pipeline's firm service is not available, a cost based interruptible rate is always available as an alternative when a releasing shipper attempts to withhold capacity.

*D. Monitoring*

42. Order No. 637 improved the Commission's and the industry's ability to monitor capacity release transactions by requiring daily posting of these transactions on pipeline Web sites.[50] This has increased the information available to buyers while at the same time making it easier for the Commission to identify situations in which shippers are abusing their market power.[51] Further, the Commission will entertain complaints and respond to specific allegations of market power on a case-by-case basis if necessary. Furthermore, the Commission will direct staff to monitor the capacity release program and, using all available information, issue a report on the general performance of the capacity release program, within six months after two years of experience under the new rules.

*E. Requests to Expand Market-Based Rate Authority*

1. Removal of Price Ceiling for Long-Term Releases

43. Several commenters request that the Commission remove the price ceiling on long-term capacity releases in addition to eliminating the price ceiling on short-term capacity releases. The Commission declines to make such an adjustment to its policies at this time for several reasons. As discussed above, by lifting the price ceiling for short-term capacity releases, the Commission seeks to provide releasing shippers the flexibility to price their capacity in a manner consistent with the short-term price variations in transportation capacity market values. This action will ameliorate restrictions on the efficient allocation of capacity during the short-term periods when demand drives the value of transportation capacity above the current maximum rate.

44. Limiting the removal of the release ceiling to short-term transactions will also serve as additional protection for potential replacement shippers. Such a limit will ensure that a replacement shipper cannot be locked into a transaction that is not protected by the maximum rate ceiling for more than one year. The expiration of such a short-term transaction would give the replacement shipper an opportunity to explore other options for satisfying its capacity needs. The replacement shipper could seek to negotiate a different price with its current releasing shipper or to obtain capacity from another releasing shipper or directly from the pipeline.[52] Any transaction in which the parties want to continue the release past one year would have to be re-posted for bidding to ensure that the capacity is allocated to the highest valued use. This bidding process could provide an opportunity for re-determining the current market value of the capacity.

45. Finally, because any such release of a year or less would have to be re-posted for bidding upon its expiration, the second release would be a new release separate from the first release, and thus such a second release of a year or less would also not be subject to the price ceiling. The Commission, however, requests comment on whether there should be any limit on the ability of releasing shippers to make multiple, consecutive short-term releases not subject to the price ceiling.

2. Removal of Price Ceiling for Pipeline Short-Term Transactions

46. Pipelines request that the Commission remove the price ceiling for primary pipeline capacity whether firm

[44] Order No. 637 at 31,273–75.

[45] *INGAA* at 32.

[46] *Tennessee Gas Pipeline Co.,* 91 FERC ¶ 61,053 (2002), *reh'g denied*, 94 FERC ¶ 61,097 (2001), *petitions for review denied sub nom., Process Gas Consumers Group* v. *FERC,* 292 F.3d 831, 837 (D.C. Cir. 2002).

[47] *See, Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076, *reh'g denied*, 75 FERC ¶ 61,024 (1996), *petitions for review denied sub nom., Burlington Resources Oil & Gas Co.* v. *FERC*, 172 F.3d 918 (D.C. Cir. 1998). *See also Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

[48] *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines,* 74 FERC ¶ 61,076 at 61,240 (1996).

[49] *INGAA* at 32.

[50] 18 CFR 284.8 (2007).

[51] Order No. 637 at 31,283; Order No. 637–A at 31,558.

[52] Releasing and replacement shippers cannot simply roll over a short-term release transaction in order to extend the release beyond one year. The Commission's current regulations do not permit rollovers or extensions of capacity releases made at less than maximum rate or for less than 31 days without re-posting and bidding of that capacity. 18 CFR Section 284.8(h) (2007).

or interruptible. In sum, they argue that because the transportation of gas on pipelines has become sufficiently competitive, and because released capacity competes directly with primary short-term firm, interruptible transportation and storage services provided by interstate pipelines, the Commission should lift the rate ceiling on the entire short-term capacity market, not just on capacity releases. Further, they assert that because short-term firm and interruptible services compete directly with capacity release, the same market liquidity considerations that warrant lifting the ceiling on short-term releases support lifting the price ceiling in the primary market. The pipelines assert that the Commission should treat all holders of capacity equally, whether they are pipelines or releasing shippers.

47. The pipelines also assert that removing the price ceiling only on short-term capacity releases would bifurcate the single marketplace for natural gas transportation services. They argue that if prices for some of the capacity in the marketplace remain subject to a price ceiling while the price ceiling is removed for other forms of capacity, then once the capped capacity has been fully utilized, prices for the uncapped capacity will be higher than they would have been without any price ceiling at all. They assert that in affirming the Commission's experiment in removing the price ceiling for short-term capacity releases, the court in *INGAA* recognized this economic cost and labeled it as a ''cost of gradualism.'' [53]

48. The Commission is not proposing to remove the price ceiling for primary pipeline capacity. Pipelines already have significant ability to use market based pricing. Unlike capacity release transactions, pipelines, as discussed above, currently can enter into negotiated rate transactions above the maximum rate. Pipelines also may seek market based rates by making a filing with the Commission establishing that they lack market power in the markets they serve.[54] In addition, pipelines have the ability to propose seasonal rates for their systems, and therefore, recover more of their annual revenue requirement in peak seasons.[55]

49. Moreover, the Commission is concerned about removing rate ceilings for all pipeline transactions without the showings required above in order to protect against the possible exercise of market power. First, as discussed above, the price ceilings on pipeline capacity serve as an effective recourse rate for both pipeline negotiated rate transactions and capacity release transactions to prevent pipelines and releasing shippers from withholding capacity.[56] Second, pipeline capacity is not identical to release capacity, because ownership of the pipeline capacity is likely to be more concentrated than capacity held by shippers for release.[57] Third, the Commission has found that it needs to regulate primary pipeline capacity to ensure that pipelines do not withhold capacity in the long-term by not constructing additional facilities. Because pipelines are in the best position to expand their own systems, cost-of-service rate ceilings help to ensure that pipelines have appropriate incentives to construct new facilities when needed. As the Commission found, ''the only way a pipeline [can] create scarcity to force shippers to accept longer term contracts would be to refuse to build additional capacity when demand requires it.'' [58] As long as cost-of-service rate ceilings apply, however, ''pipelines [will] have a greater incentive to build new capacity to serve all the demand for their service, than to withhold capacity, since the only way the pipeline could increase current revenues and profits would be to invest in additional facilities to serve the increased demand.'' [59] Similarly, as long as pipeline short-term services are subject to a cost of service rate, the pipelines will not limit their construction of new capacity to meet demand in order to create scarcity that increases short-term prices. Indeed, releases at above the maximum rate will indicate that pipeline capacity is constrained and demonstrate that constructing additional capacity could be profitable.

50. The pipelines also maintain that not removing the price ceiling for their capacity that competes with released capacity will bifurcate the market, resulting in possibly higher prices for the uncapped release market. They argue that where a portion of the supply of a good or service is subject to price controls, and demand exceeds (the price-controlled) supply at the fixed price, the market-clearing price in the uncontrolled segment will normally be higher than if no price controls were imposed on any of the supply. Purchasers placing a lower value on the good may nevertheless be able to purchase the price-controlled supply, thereby ''using up'' some of the aggregate supply that would otherwise be available to purchasers placing a higher value on the good. This alters the demand-supply ratio in the uncontrolled market, leading to a higher market clearing price in that market.

51. Because of the nature of the pipeline short-term capacity, we do not think that retaining the cost of service recourse rates for that capacity will create such pricing distortions. The premise of the pipelines' argument is that continued price controls on the pipeline's sales of short-term capacity will enable shippers placing a lower value on the capacity to ''use up'' some of the supply, thereby reducing the amount of capacity available for purchase by shippers placing a higher value on the capacity. This premise is incorrect. Short-term pipeline capacity is sold as interruptible transportation; therefore, firm capacity held by shippers will have scheduling priority over the pipeline's interruptible capacity. In essence, pipeline interruptible service is derived from existing shippers' decision not to use or release their firm capacity or from unsold pipeline capacity. Thus, even if a shipper placing a relatively low value on the capacity has a higher position on the pipeline's queue for price-controlled interruptible transportation, it is not guaranteed that it can acquire (or ''use up'') that capacity, leading to the supposed higher market clearing price. A firm shipper could always release its unused firm capacity to a replacement shipper who places a higher value on that capacity, thereby displacing the lower-value interruptible shipper.[60]

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[53] *INGAA* at 36.

[54] *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines,* 74 FERC ¶ 61,076 (1996).

[55] *See* Order No. 637 at 31,574–31, 581.

[56] In Order No. 890, the Commission retained price ceilings on transportation capacity for transmission owners to provide similar recourse rate protection. *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, 72 FR 12,266 (March 15, 2007), 12366, FERC Stats. & Regs. ¶ 31,241 at P 808–09 (2007).

[57] As the *INGAA* court stated:

In fact the Commission's distinction is not unreasonable. Despite the absence of Herfindahl-Hirschman indices for non pipeline capacity holders, there seems every reason to suppose that their ownership of such capacity (in any given market) is not so concentrated as that of the pipelines themselves—the concentration that prompted Congress to impose rate regulation in the first place.

*INGAA* at 23–24, *citing, FPC* v. *Texaco,* 417 U.S. 380, 398 n.8 (1974).

[58] Regulation of Short-Term Natural Gas Transportation Services, 101 FERC ¶ 61,127, at P 12 (2002), *aff'd, American Gas Ass'n* v. *FERC,* 428 F.3d 255 (D.C. Cir. 2005). *See also Tennessee Gas Pipeline Co.,* 91 FERC ¶ 61,053 (2000), *reh'g denied,* 94 FERC ¶ 61,097 (2001), *aff'd,* 292 F.3d 831 (D.C. Cir. 2002).

[59] *Id.*

[60] For example, assume the maximum rate is $1.00 and there are several shippers. One shipper is willing to pay up to $1.00 for capacity, while the

52. Moreover, even in the context of firm short-term pipeline capacity, the scenario posited by the pipelines would not result in higher market clearing prices as long as arbitrage exists. Any shipper with a higher queue position that acquires the pipeline capacity at the lower capped rate would have an incentive to resell that capacity to another shipper who places a higher value on the capacity, thus ensuring that the market clearing price will reflect all relevant demand.[61]

## III. Asset Management Arrangements

### *A. Background*

53. In general, AMAs are contractual relationships where a party agrees to manage gas supply and delivery arrangements, including transportation and storage capacity, for another party. Typically a shipper holding firm transportation and/or storage capacity on a pipeline or multiple pipelines temporarily releases all or a portion of that capacity along with associated gas production and gas purchase agreements to an asset manager (commonly a marketer). The asset manager uses that capacity to serve the gas supply requirements of the releasing shipper, and, when the capacity is not needed for that purpose, uses the capacity to make releases or bundled sales to third parties.

54. While AMAs may be fashioned in a myriad of ways, there are several common components of these arrangements. First, the releasing shipper generally enters into a pre-arranged capacity release to an asset manager ostensibly at the maximum rate in order to avoid the bidding requirement. Second, the releasing shipper makes payments to the asset manager for the gas supply service performed by the asset manager for the releasing shipper. These payments may include the releasing shipper paying the asset manager: (1) The full cost of the released capacity (*e.g.*, maximum rate) on the theory that the asset manager is using the released capacity to transport the releasing shipper's gas supplies, (2) a management fee for transportation-related tasks (*e.g.* nominations, scheduling, storage injections, etc.) associated with the asset manager's obligation to provide gas supplies to the releasing shipper, and (3) the asset manager's cost of purchasing gas supplies for the releasing shipper. Third, the asset manager generally shares with the releasing shipper the value it is able to obtain from the releasing shipper's capacity and supply contracts when those assets are not needed to supply the releasing shipper's gas needs. The asset manager obtains such value either by re-releasing the capacity or by using it to make bundled sales to third parties. The asset manager may share that value by: (1) Paying a fixed ''optimization'' fee to the releasing shipper, (2) sharing profits pursuant to an agreed-upon formula, or (3) making its gas sales to the releasing shipper at a lower price.

55. In many instances the asset manager is chosen through a request for proposal (RFP) process. The RFP describes the details and terms and conditions of the proposed deal and seeks bids from service providers willing to provide the requested services. The methodology for choosing a winning bidder under an RFP often reflects many different factors, including price, creditworthiness, experience, reliability, and flexibility, and it is clear that price is not always the determining factor. Some RFP procedures are state mandated, and thus, in those situations, the LDC must get approval from the state for the final agreement.

56. There are several ways in which the AMAs described above implicate the Commission's current regulations. The first relates to the Commission's prohibition against the ''tying'' of release capacity to any condition. As discussed above, the Commission instituted the prohibition against the tying of capacity in response to concerns that releasing shippers would attempt to add terms and conditions that would ''tie the release of capacity to other compensation paid to the releasing shipper.'' [62] A critical component of many AMAs is that the releasing shipper wants to be able to require the replacement shipper (asset manager) to satisfy the supply needs of the releasing shipper and take assignment of the releasing shipper's gas supply agreements as a condition of obtaining the released capacity.

57. AMAs also have implications for the rate cap and bidding regulations. As noted, in an AMA, the releasing shipper typically enters into a prearranged deal to release all of its pipeline capacity at the maximum rate to the marketer. It is reasonable to surmise that the main reason for the maximum release rate is so the release will qualify for the exemption from bidding of all maximum rate prearranged capacity releases.[63] By avoiding the requirement to post the release for bidding, the releasing shipper can ensure that the capacity will go to the asset manager whom the releasing shipper has determined will provide the most effective asset management services.

58. As described above, however, the releasing shipper may agree to rebate some or all of the demand charge to the marketer so that the marketer's actual cost of obtaining the capacity is something less than the maximum rate.[64] The Commission has held that such rebates render the release to be at less than the maximum rate, thereby requiring that the prearranged release be posted for bidding.[65]

other shippers are willing to pay much higher rates. Even if the shipper placing the lowest value on the capacity was the highest on the pipeline's interruptible queue, it would not be able to acquire capacity at the $1.00 rate, because the other shippers could acquire released capacity by bidding above the maximum rate, thereby preventing the allocation of any interruptible service.

[61] The pipelines rely on an example in Order No. 637–B that was cited by the court in *INGAA* for the proposition that capping one part of the market will result in overall higher prices. But that example was in a very different context, a situation in which a releasing shipper in a retail access state provided released capacity at a preferential rate to one set of marketers that were obligated to serve retail load, while selling at an uncapped rate to other marketers. In the first place, this situation did not involve interruptible capacity. Moreover, unlike the case with pipeline capacity, the favored marketer could not arbitrage its lower price because it was committed to serving retail load.

[62] Order No. 636–A at 30,559.

[63] 18 CFR 284.8 (c)–(e). The Commission stated in Order No. 636–A that releasing shippers may include in their offers to release capacity reasonable and non-discriminatory terms and conditions to accommodate individual release situations, including provisions for evaluating bids. All such terms and conditions applicable to the release must be posted on the pipeline's electronic bulletin board and must be objectively stated, applicable to all potential bidders, and non-discriminatory. For example, the terms and conditions could not favor one set of buyers, such as end users of an LDC, or grant price preferences or credits to certain buyers. The pipeline's tariff also must require that all terms and conditions included in offers to release capacity be objectively stated, applicable to all potential bidders, and non-discriminatory. Order No. 636–A at 30,557.

[64] Typically, the releasing shipper first releases its upstream assets, including pipeline capacity, storage, and gas supply, to the asset manager at cost. During the remaining term of the deal the releasing shipper purchases delivered gas at the agreed upon rate, which is usually the transportation and storage costs plus the market price of gas, plus fees and less whatever sharing of efficiency gains the asset manager is able to achieve. Sometimes fees and shared efficiency gains are reflected in some agreed upon reduction in the price of delivered gas. (The details are subject to negotiation and vary tremendously.) Because the mechanics of capacity releases often require the releasing shipper to release pipeline capacity at the maximum rate, rather than a discounted rate that the releasing shipper may actually pay to the pipeline, some other consideration must be worked into the transaction to balance the difference between the discounted rate and the maximum rate at which the release is set.

[65] In *Louis Dreyfus Energy Services, L.P.,* 114 FERC ¶ 61,246 (2006), the Commission stated that:

[t]he Commission has held that any consideration paid by the releasing shipper to a prearranged replacement shipper must be taken into account in

Continued

59. Moreover, as described above, some AMAs may require the asset manager (replacement shipper) to pay fees to the releasing shipper. The Commission has ruled that if the prearranged release is at the maximum rate, such additional payments violate the maximum rate ceiling on capacity releases.[66]

60. Many commenters consider the applications of the Commission's policies and regulations described above as obstacles to fashioning AMAs. They request clarification of, or revisions to, the current policies and regulations to allow releasing shippers to release a package of transportation or storage capacity and gas supply contracts to a willing party who will sell the gas to the releasing shipper and take assignment of the gas purchase contracts without running afoul of the prohibition against tying. Some commenters also request that the Commission clarify that packaging gas supply and pipeline capacity, or multiple segments of capacity, as part of an asset management arrangement, would not violate the Commission's prohibition against tying. Others suggest that the tying prohibition should be eliminated altogether or that bundling of pipeline capacity and gas commodity should be allowed as long as there is a legitimate business purpose.

61. A large number of commenters advocate elimination of the bidding requirement discussed above, particularly in the AMA context. These parties argue that there is no need for posting and bidding of capacity release transactions and state that it is unduly burdensome, makes it difficult to respond quickly to market opportunities to release, and no longer makes sense in terms of the arrangements being made in today's AMAs. Others contend that the bidding requirement is redundant in instances where states require that asset managers be selected in an RFP process, which results in a chosen asset manager and one or more pre-arranged capacity release transactions. They argue that a further bidding requirement compromises the integrity and efficiency of the RFP process at the state level. Commenters also argue that there should be no bidding in the AMA context because those transactions are not suited to a single auction methodology.

62. Below, we discuss the Commission's proposal to revise the Commission's capacity release policies to give releasing shippers greater flexibility to negotiate and implement efficient AMAs. The proposal has two main parts: (1) Modifications to the current prohibition against tying releases to other conditions; and, (2) modifications to current bidding requirements.

*B. Discussion*

63. The Commission proposes revisions to its prohibition on tying of release capacity and to section 284.8 of its regulations in order to facilitate the use of AMAs. Specifically, as discussed below, the Commission proposes two revisions to its capacity release policy and regulations to facilitate the use of AMAs. First, the Commission proposes to exempt AMAs from the prohibition against tying in order to permit a releasing shipper to require that the replacement shipper agree to supply the releasing shipper's gas requirements and to require the replacement shipper to take assignment of the releasing shipper's various gas supply arrangements, in addition to the released capacity. Second, the Commission proposes to eliminate the current bidding requirement for AMAs only, such that all releases to an asset manager, made in order to implement an AMA between the releasing shipper and the asset manager, are exempt from bidding. This would exempt from bidding all such releases, including those of less than one year for which we are proposing to remove the price ceiling and those of a year or more that are at rates below the continuing maximum rate for long-term capacity releases. Both of the exemptions above would also be limited to pre-arranged releases.

64. Gas markets in general, and the secondary release market in particular, have undergone significant development and change since the inception of the Commission's capacity release program. The Commission adopted the capacity release program in Order No. 636 ''so that shippers can reallocate unneeded firm capacity'' to those who do need it.[67] The bidding requirement and the prohibition against tying the release to extraneous conditions were all part of the Commission's fundamental goal of ensuring that such unneeded capacity would be reallocated to the person who values it the most. The Commission found that such ''capacity reallocation will promote efficient load management by the pipeline and its customers and, therefore, efficient use of pipeline capacity on a firm basis throughout the year.'' [68]

65. Thus, the Commission developed its capacity release policies and regulations based on the assumption that shippers would release their capacity only when they were not using the capacity to serve their own needs. For example, the Commission envisioned that LDCs with long-term contracts for firm transportation service up to the peak needs of their retail customers would, during off-peak periods, release that portion of capacity not needed to serve the lower off-peak demand of its retail customers. However, this basic assumption underlying the capacity release program does not hold true in the context of AMAs, a relatively recent development in the capacity release market that the Commission had not anticipated.

66. In the AMA context, the releasing shipper is not releasing unneeded capacity, but capacity that is needed to serve its own supply function and will be so used during the term of the release. Releasing shippers in the AMA context are releasing capacity for the primary purpose of transferring the capacity to entities that they perceive have greater skill and expertise both in purchasing low cost gas supplies, and in maximizing the value of the capacity when it is not needed to meet the releasing shipper's gas supply needs. In short, AMAs entail the releasing shipper transferring its capacity to another entity which will perform the functions the Commission expected releasing shippers would do for themselves—purchase their own gas supplies and release capacity or make bundled sales when the releasing shipper does not need the capacity to satisfy its own needs. The goal of the changes proposed by the Commission herein is to make the capacity release program more efficient by bringing it in line with the realities of today's secondary gas markets.

67. The Commission finds that AMAs provide significant benefits to many participants in the natural gas and electric marketplaces and to the secondary natural gas market itself. The

determining whether the prearranged release is at the maximum rate. For instance, where the replacement shipper agrees to pay the pipeline the maximum rate for the released capacity, but the releasing shipper agrees to make a payment to the replacement shipper, the release must be treated as a release at less than the maximum rate to which the posting and bidding requirements of sections 284.8(c) through (e) apply. *Id.* at P 15, *citing, Pacific Gas Transmission Co. and Southern California Edison Co.,* 82 FERC ¶ 61,227 (1998).

[66] *See Consumers Energy Co.,* 82 FERC ¶ 61,284, *order approving,* 84 FERC ¶ 61,240 (1998). *See also* Order No. 636–A at 30,561, where the Commission stated that capacity cannot be ''resold at a rate including the pipeline marketing fee. The marketing fee is not part of the cost of transportation being released and the replacement shipper should not pay more than the maximum transportation rate for the capacity it is acquiring.''

[67] Order No. 636 at 30,418.

[68] *Id.*

American Gas Association (AGA), for example, notes that AMAs are an important mechanism used by LDCs to enhance their participation in the secondary market, and states that the growth and development of AMAs may represent the largest change since the Commission's market review in the Order No. 637 proceeding.[69] AMAs allow LDCs to increase the utilization of facilities and lower gas costs. They also provide the needed flexibility to customize arrangements to meet unique customer needs.[70] One important benefit of AMAs is that they allow for the maximization of the value of capacity though the synergy of interstate capacity and natural gas as a commodity. As expressed by AGA:

> [AMAs] are widely utilized and provide considerable benefits, *i.e.* lower gas supply costs generated from offsets to pipeline capacity costs and gas supply arrangements more carefully tailored to the specific requirements of the market. These benefits are generated by assembling innovative arrangements in which the unbundled components—capacity, gas supply and other services—are combined in a manner such that the total value created by the arrangement exceeds the value of the individual parts.[71]

68. AMAs are also beneficial because they provide a mechanism for capacity holders to use third party experts to manage their gas supply arrangements, an opportunity the LDCs did not have prior to Order No. 636. The time, expense and expertise involved with managing gas supply arrangements is considerable and thus many capacity holders, and LDCs in particular, have come to rely on more sophisticated marketers to take on their requirements.[72] This results in benefits to the LDCs by allowing an entity with more expertise to manage their gas supply. The ability of LDCs to use AMAs as a means of relieving the burdens of administering their capacity or supply needs on a daily basis also works to the benefit of the entire market because that burden may at times result in LDCs not releasing unused capacity.[73]

69. AMAs also provide LDCs and their customers a mechanism for offsetting their upstream transportation costs. AMAs often allow an LDC to reduce reservation costs that it normally passes on to its customers. They also foster market efficiency by allowing the releasing shipper to reduce its costs to the extent that its capacity is used to facilitate a third party sale that also benefits that third party (who gets a bundled product at a price acceptable to it).

70. LDCs are not the only entities that benefit from AMAs. Many other large gas purchasers, including electric generators and industrial users may desire to enter into such arrangements.[74] For example, AMAs increase the ability of wholesale electric generators to provide customer benefits through superior management of fuel supply risk, allow generators to focus their attention on the electric market, and eliminate administrative burdens relating to multiple suppliers, overheads, capital requirements and the risks associated with marketing excess gas and pipeline imbalances.[75]

71. More importantly, AMAs provide broad benefits to the marketplace in general. They bring diversity to the mix of capacity holders and customers that are served through the capacity release program, thus enhancing liquidity and diversity for natural gas products and services. AMAs result in an overall increase in the use of interstate pipeline capacity, as well as facilitating the use of capacity by different types of customers in addition to LDCs.[76] AMAs benefit the natural gas market by creating efficiencies as a result of more load responsive gas supply, and an increased utilization of transportation capacity.

72. AMAs further bring benefits to consumers, mostly through reductions in consumer costs. AMAs provide in general for lower gas supply costs, resulting in ultimate savings for end use customers. The overall market benefits described above also inure to consumers. These benefits have been recognized by state commissions and the National Regulatory Research Institute.[77]

73. The Interstate Natural Gas Association of America (*INGAA*) agrees with the Marketer Petitioners and others that the Commission ''should adapt its regulations to facilitate efficient and innovative marketing of capacity that have developed since Order No. 636,'' provided the Commission remains guided by the ''principle of full transparency of the terms of such capacity release arrangements.'' [78]

74. Based on this industry-wide support, the Commission believes that AMAs are in the public interest because they are beneficial to numerous market participants and the market in general. Accordingly, the Commission is proposing changes to its policies and regulations to facilitate the utilization and implementation of AMAs.

1. Tying

75. As noted above, in Order No. 636–A, the Commission established a prohibition against the tying of capacity release to conditions unrelated to acquiring transportation capacity, where it stated that:

> [t]he Commission reiterates that *all* terms and conditions for capacity release must be posted and non-discriminatory and must relate solely to the details of acquiring transportation on the interstate pipelines. Release of capacity cannot be tied to any other conditions. Moreover, the Commission will not tolerate deals undertaken to avoid the notice requirements of the regulations. Order No. 636–A at 30, 559.

76. The Commission established the prohibition against tying in response to commenters' concerns that releasing shippers would attempt to add terms and conditions that would ''tie the release of capacity to other compensation paid to the releasing shipper.'' The examples of illicit tying given by the commenters included an LDC requiring a potential replacement shipper to pay a certain price for local gas transportation service or a producer conditioning the release of capacity on the purchase of the producer's gas.[79] Since then, the Commission has granted several waivers of the prohibition against tying,[80] but only where an entity sought the waiver to exit the natural gas transportation business.[81]

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[69] *See* Comments of AGA at 21.

[70] *See e.g.*, Comments of New Jersey Natural Gas Company at 9.

[71] AGA Comments at 14.

[72] *See, e.g.*, Comments of BG Energy Merchants, LLC at 3–4; APGA Comments at 2–3; Comments of BG Energy Merchants, LLC at 8; Comments of the Marketer Petitioners at 11; and Comments of FPL Energy LLC at 10.

[73] *See* Comments of Marketer Petitioners at 11.

[74] As noted by New Jersey Natural Gas Company (NJNG), ''in addition to LDCs, there are many other types of large natural gas purchasers, such as electric generation facilities and large gas process industrial users, who face the same challenges with managing and optimizing their natural gas portfolios. These customers, whose core business lies outside the natural gas industry—are also likely consumers of third party portfolio management services.'' NJNG Comments at 9, n. 9.

[75] EPSA Comments at 4–5.

[76] With regard to the advantages of diversity among shippers, the EPSA provides as an example the situation where an LDC looking to shed underutilized summer capacity may not have the capability to identify and contract with an electric generator that needs summer gas, whereas an asset manager would likely be much better equipped to handling the logistics and risks associated with such an off system sale by the LDC.

[77] *See* Comments of BG Energy Merchants, LLC at 8–9.

[78] *INGAA* Comments at 3.

[79] Order No. 636–A at 30,559.

[80] *Tennessee Gas Pipeline Co.*, 113 FERC ¶ 61,106 (2005); *Northwest Pipeline Corp. and Duke Energy Trading and Marketing*, 109 FERC ¶ 61,044 (2004).

[81] *See Louis Dreyfus Energy Services, L.P.*, 114 FERC ¶ 61,246 at 61,780 (2006), denying a waiver request.

77. Some commenting parties claim that the Commission's recent orders waiving certain of its capacity release requirements in specific situations have increased uncertainty regarding the use of pre-arranged capacity release transactions to implement portfolio management services. They state that the language in these orders suggests that combining gas supply and pipeline capacity, or packaging multiple segments of capacity together, violates the prohibition against tying, absent a prior waiver of the Commission's capacity release rules.

78. The Commission recognizes that the broad language in Order No. 636-A setting forth the prohibition against tying, as well as the Commission's subsequent rulings in individual cases, have raised a concern that the types of transactions proponents of AMAs want to implement may run afoul of the current policy. For example, capacity releases made for the purpose of implementing an AMA generally include a condition that the asset manager taking the release will supply the gas requirements of the releasing shipper. The release may also require the asset manager to take assignment of the releasing shipper's gas supply contracts. However, such conditions could be considered to go beyond ''the details of acquiring transportation on the interstate pipelines,'' because these conditions relate to the purchase and sale of the gas commodity.

79. The Commission thus proposes a partial exemption of AMAs from the prohibition against tying in order to permit a releasing shipper in a pre-arranged release to require that the replacement shipper (1) agree to supply the releasing shipper's gas requirements and (2) take assignment of the releasing shipper's gas supply contracts, as well as released transportation capacity on one or more pipelines [82] and storage capacity with the gas currently in storage. This exemption would allow firm shippers to pre-arrange releases of capacity to an asset manager (replacement shipper) along with upstream assets and gas purchase agreements in a bundled transaction where the capacity being released will be used to meet that party's gas supply requirements. In addition, the proposed exemption would be limited to releases to an asset manager as part of establishing an AMA. Thus, the asset manager would be subject to the policy against tying when it makes subsequent re-releases to third parties during the term of the AMA. For purposes of this exemption and the proposed exemption from bidding discussed in the next section, a release transaction made in the context of implementing an AMA will be any pre-arranged capacity release that includes a condition that the releasing shipper may, on any day, call upon the replacement shipper to deliver a volume of gas equal to the daily contract demand of the released capacity. This proposed definition is discussed further below.

80. As discussed above, AMAs provide recognizable benefits to market participants and the marketplace overall in terms of more load-responsive use of gas supply, greater liquidity, increased utilization of transportation capacity and the overall efficiencies these arrangements bring to the marketplace. However, AMAs require that the releasing shipper be able to release both its capacity and its natural gas supply arrangements in a single package. The very purpose of the transaction is frustrated if the releasing shipper cannot combine the supply and capacity components of the deal. This tying is meant to ensure that the released capacity will continue to be used to support the releasing shipper's acquisition of needed gas supplies. Based on the fact that AMAs provide benefits to the market, and that tying of capacity and supply is necessary to implement beneficial AMAs, it seems reasonable to allow the tying conditions discussed above in the AMA context in order to foster and facilitate the use and implementation of such arrangements. The partial exemption of AMAs proposed here will foster maximization of the interstate pipeline grid and enhance competition.

81. While the Commission is proposing changes to its prohibition against tying in order to facilitate AMAs, the Commission is not adopting the proposals of some commenters that the restriction against tying be eliminated altogether.[83] The Commission's primary goal in establishing the capacity release program was to ensure that transfers of interstate pipeline capacity from one shipper to another are made in a not unduly discriminatory or preferential manner to the person placing the highest value on the pipeline capacity. If a shipper ties a release of unneeded capacity to matters that are unrelated to the details of acquiring that transportation capacity, the capacity may not go to the person who values it the most. The comments on this issue have not persuaded the Commission that, outside the AMA context, release conditions unrelated to the details of acquiring transportation service provide significant benefits to the natural gas market as a whole similar to those provided by AMAs. Therefore, when a shipper releases excess capacity that it does not need for the purpose for which it was originally acquired, the Commission's original concerns underlying the prohibition against tying still apply. The Commission continues to believe that such excess capacity should be allocated to the shipper who values it the most, regardless of whether the releasing shipper has some private business reason why it might prefer the replacement shipper to use its unneeded capacity in some particular manner. Thus, based on the distinguishing and mitigating factors of AMAs as related to the reasons underlying the prohibition against tying, the Commission is only proposing to modify its prohibition against tying with respect to pre-arranged releases to implement AMAs, and not all capacity releases.

82. However, the Commission requests comment on whether it should clarify its prohibition concerning tying in one additional circumstance, which is not related to the AMA context. Some commenters assert that the Commission should facilitate the release of storage capacity by permitting a releasing shipper to (1) require a replacement shipper to take assignment of any gas that remains in the released storage capacity at the time the release takes effect and/or (2) require a replacement shipper to return the storage capacity to the releasing shipper at the end of the release with a specified amount of gas in storage.[84] For example, some LDC commenters point out that they rely on having a certain level of gas in storage by the end of the off-peak summer injection season in order to be able to serve their customers during the peak winter season.[85] Therefore, while they may desire to release storage capacity at times during the off-peak summer period, gas must be injected into the storage capacity at a rate that will permit the LDC to have its required amount of gas in storage by the end of the injection period. If an LDC could require the replacement shipper to return the storage capacity with the required amount of gas in storage at the

[82] Commission policy already permits a releasing shipper to require a replacement shipper to take a release of aggregated capacity contracts on one or more pipelines, at least in some circumstances. *See* Order No. 636–A at 30,558 and n. 144.

[83] *See e.g.*, Comments of Nstar at 7 (LDCs should be allowed to link capacity to whatever it wants to make an ''effective'' package); Comments of Direct Energy Services, LLC at 6 (Commission should permit market participants to offer whatever bundled transactions they perceive to be in their best interests).

[84] *See e.g.* Comments of AGA at 24.

[85] *Id. See also* Comments of Keyspan at 36.

end of the release, it would be able to release more storage capacity than it can currently. The Commission requests comment on whether it should clarify its prohibition on tying to allow a releasing shipper to include conditions in a storage release concerning the sale and/or repurchase of gas in storage inventory.

2. The Bidding Requirement

83. The Commission's current regulations require capacity release transactions to be posted for competitive bidding, unless the transactions are at the maximum rate or are for 31 days or less.[86] The Commission's principal goal in requiring release transactions to be posted for bidding was to ensure that interstate transportation capacity would be allocated to those placing the highest value on obtaining that capacity and to prevent discriminatory allocation of interstate capacity at prices below the market price. The regulations also allow the releasing shipper to enter into a ''pre-arranged'' release with a designated replacement shipper before any posting for bidding.[87] Prearranged releases are subject to the same bidding requirements as other releases; however, the prearranged replacement shipper will receive the capacity if it matches the highest bid submitted by any other bidder.[88] In Order 636–A, the Commission rejected requests for a general exception to the bidding process for all pre-arranged deals.[89]

84. As noted, the Commission has received a number of comments suggesting that it eliminate the requirement for competitive bidding for capacity releases, especially in the AMA context. LDCs in particular comment that bidding is unduly burdensome and often results in time consuming procedures that have little practical benefit. They maintain that bidding adds uncertainty to the process because it creates a risk for the replacement shipper that it will be unable to acquire capacity at the price it expected, and thus bidding can prevent parties from negotiating mutually beneficial transactions. Others comment that the delay caused by bidding makes it difficult to respond to market opportunities to release, and thus bidding no longer makes sense in today's marketplace. Some claim that given the development of the natural gas market and the natural economic incentive to release at the highest price, the competitive bidding requirement is no longer necessary to achieve allocative efficiency.

85. Commenters assert that the inefficiencies of the bidding process pose substantial obstacles to successful releases to implement AMAs. Bidding and matching often prevent timely closing of AMA transactions involving aggregation of capacity and supply or aggregation of capacity on multiple pipelines. This can result in preventing willing buyers and sellers attempting to reach agreements that are in their respective best interests from consummating deals. Commenters also note that AMAs usually involve complex contractual structures with a variety of valued pieces. These deals are often negotiated at arms' length, and thus, requiring that they be made subject to bidding creates a risk that one aspect of the deal could be lost thus dooming the entire transaction. Because AMAs often involve extensive negotiations that lead to pre-arranged deals, the releasing party wants to be sure that the replacement shipper with whom it struck the deal is the one to get it, on the terms discussed during negotiations. Again, a bidding requirement puts that goal at risk.

86. Proponents of eliminating bidding for AMAs also point out that when an entity wishes to use a asset manager in the interest of efficient use of gas supply and pipeline capacity assets, it is often required by state regulation to select the asset manager though a competitive RFP process. This process allows entities that are interested in managing the assets to submit a bid to do so, subject to the terms and conditions of the RFP. This process results in a chosen asset manager for one or more pre-arranged capacity releases. The commenters state that, if this same pre-arranged deal is subject to a further bidding process under the Commission's regulations, then that second process is redundant, and compromises the integrity and efficiency of the state mandated competitive process that has already been completed.

87. The Commission proposes to exempt pre-arranged releases to implement AMAs from the bidding requirements of section 284.8 of its regulations, such that pre-arranged releases made to asset managers in order to implement AMAs will not be subject to competitive bidding.[90] In light of its experience with capacity releases and the comments discussed above, the Commission has reconsidered the need for bidding in the AMA context. It appears that at least in the AMA context, the bidding requirement creates an unwarranted obstacle to the efficient management of pipeline capacity and supply assets.

88. All capacity releases made to implement AMAs are pre-arranged because it is important that a releasing shipper be able to use the asset manager of its choice to effectuate the components of the agreement. Unlike a normal capacity release where the releasing shipper is often shedding excess capacity and has no intention of an ongoing relationship with the replacement shipper, in the AMA context the identity of the replacement shipper is often critical because it will manage the releasing shipper's portfolio for some time into the future. During the process of choosing an asset manager (often an RFP process), the releasing shipper considers a number of factors, including experience in managing capacity and gas sales, experience with a particular pipeline or area of the country, flexibility, creditworthiness and price. Because the asset manager will manage the releasing shipper's gas supply operations on an ongoing basis, it is critical that the releasing shipper be able to release the capacity to its chosen asset manager. Requiring releases made in order to implement an AMA to be posted for bidding would thus interfere with the negotiation of beneficial AMAs, by potentially preventing the releasing shipper from releasing the capacity to its chosen asset manager. The Commission concludes that the benefits of facilitating AMAs outweigh any disadvantages in exempting such releases from bidding.

89. While the Commission is proposing to exempt AMAs from the capacity release bidding requirements, AMAs will remain subject to all existing posting and reporting requirements. Pipelines will still be obligated to provide notice of the release pursuant to 18 CFR 284.8(d). The details of the release transaction must also be posted on the pipeline's Internet Web site under 18 CFR 284.13(b), including any special terms and conditions applicable to the capacity release transaction. Moreover, the pipeline's index of customers must include the name of any agent or asset manager managing a shipper's transportation service and whether that agent or asset manager is an affiliate of the releasing shipper.[91] Therefore, the Commission's goals of disclosure and transparency will still be met.

[86] 18 CFR § 284.8(h).

[87] 18 CFR § 284.8(b).

[88] 18 CFR § 284.8(e).

[89] Order No. 636–A at 30, 555.

[90] For the purposes of this exemption the Commission will use the same definition as discussed in the tying section above, and explained more fully below, for identifying releases eligible for the exemption.

[91] 18 CFR 284.13(c)(2)(viii) and 284.13(c)(2)(ix).

90. The Commission is not proposing at this time to modify its existing bidding requirements with respect to capacity releases made outside the AMA context (including releases the asset manager makes to third parties). As discussed, the Commission originally adopted the bidding requirements in order to ensure that releases are made in a non-discriminatory manner to the person placing the highest value on the capacity. The comments received by the Commission show broad support from all segments of the industry for modifying the bidding requirements in order to facilitate AMAs, which most commenters believe provide significant benefits to the natural gas market. However, the comments do not reflect a similar level of support for removing the bidding requirements altogether. In addition, there has been no showing that non-AMA prearranged releases provide benefits of the type we have found justify exempting AMA releases from bidding. Moreover, in the typical non-AMA pre-arranged release, price is the primary factor, and therefore the releasing shipper should generally be indifferent as to the identity of the replacement shipper so long as it receives the highest possible price for its release. Therefore, the Commission does not presently have information showing that, outside the AMA context, the existing bidding requirements hinder beneficial developments in the market or no longer serve their original purpose.

3. Definition of AMAs

91. In light of the proposed exemptions for AMAs discussed above, the Commission proposes to define a capacity release that is made as part of an AMA, and thus would qualify for the exemptions, to be: Any pre-arranged release that contains a condition that the releasing shipper may, on any day, call upon the replacement shipper to deliver to the releasing shipper a volume of gas equal to the daily contract demand of the released transportation capacity.[92] If the capacity release is a release of storage capacity, the asset manager's delivery obligation need only equal the daily contract demand under the release for storage withdrawals.

92. In developing a definition of AMA releases, the Commission seeks to balance two concerns. First, because the Commission is proposing that the exemptions from bidding and the prohibition against tying apply only in the context of AMAs, the Commission seeks a definition of the eligible releases that is limited to those releases that are made as part of a *bona fide* AMA. On the other hand, because the purpose of the proposed exemption is to facilitate AMAs, the Commission wants to avoid a definition that is so narrow it would limit the types of AMAs which shippers and asset managers may negotiate and thus discourage efficient and innovative arrangements.

93. The proposed definition focuses on what the Commission understands to be the fundamental purpose of AMAs: That the asset manager will use the released capacity to deliver gas supplies to the releasing shipper. The Commission believes that the requirement that the replacement shipper contractually commit itself to deliver to the releasing shipper, on any day, gas supplies equal to the daily contract demand of the released capacity should achieve the goal of exempting only AMA transactions from bidding and the prohibition against tying. Further, because all AMAs are done as pre-arranged deals, the proposed definition requires that the release be pre-arranged. The Commission requests comment on whether other conditions should be imposed on the eligible releases in order to ensure that the proposed exemptions are limited to AMAs.

94. The Commission also believes that the proposed definition is sufficiently flexible that it should not interfere with the development of efficient and beneficial AMAs. The Commission recognizes that a shipper may desire to enter into an AMA for the purpose of obtaining only a portion of its required gas supplies. Or it may desire to enter into multiple AMAs with different asset managers. The proposed definition does not prevent such arrangements, since it contains no requirement that the releasing shipper obtain any particular percentage of its gas supplies pursuant to a particular AMA. The only requirement is that the asset manager commits itself to providing gas supplies up to the contract demand of the released contract. In addition, while the Commission expects that the released capacity will be used by the asset manager to ship gas supplies to the releasing shipper, the proposed definition does not require that the asset manager make all its deliveries to the releasing shipper over the released capacity.

95. The Commission also is not proposing to limit the types of entities that can use AMAs and take advantage of the exemptions from bidding and the prohibition against tying, provided the criteria stated above are met. The Commission recognizes that electric generators and industrial end-users may make use of AMAs, and thus the exemption is not limited to LDCs utilizing AMAs.

96. Finally, the Marketer Petitioners, in their original request for clarification, suggested that gas sellers may desire to use AMAs. However, as proposed, the definition of AMA does not include such arrangements, unless the replacement shipper has an obligation to re-sell to the releasing shipper equivalent quantities of natural gas. The Commission requests comments on whether it should expand the definition of AMAs eligible for the partial exemptions from the prohibition on tying and bidding to include gas marketing AMAs. Commenters should also address the question of how the Commission would distinguish a gas marketing AMA eligible for such an exemption from other release transactions.

## IV. State Mandated Retail Choice Programs

97. Section 284.8(h)(1) of the Commission's current capacity release regulations exempt prearranged releases of more than 31 days from bidding only if they are at the ''maximum tariff rate applicable to the release.'' States with retail open access gas programs (in which customers can buy gas from marketers rather than LDCs) have relied on this ''safe harbor'' exemption from bidding in structuring their programs. Specifically, a key component of most such programs is a provision for the LDC to make periodic releases, at the maximum rate, of its interstate pipeline capacity to the marketers participating in the program. The marketers then use the released capacity to transport the gas supplies that they sell to their retail customers. The exemption from bidding ensures that the LDC's capacity is transferred only to the marketers participating in the state retail unbundling program and is not obtained by non-participating third parties.

98. However, the Commission's proposal to lift the price ceiling for releases of one year or less would have the effect of eliminating the bidding exemption for releases with terms of between 31 days and one year. That is because there would no longer be a maximum tariff rate applicable to such

[92] It is the Commission's intention that with regard to an AMA involving several separate releases to the asset manager, the delivery obligation would be applied separately to each release, not on cumulative basis to the whole AMA. For example if an LDC has capacity of 100,000 Dth on both upstream Pipeline A and downstream Pipeline B, the asset manager could comply with the proposed delivery condition by shipping the same 100,000 Dth over both Pipeline A and Pipeline B.

releases. Moreover, in this NOPR, the Commission is proposing an additional exemption from bidding only for releases made in the context of an AMA, and releases made as part of a retail unbundling program would not qualify for that exemption as it is currently proposed. As a result, absent some additional modification of the regulations concerning bidding, LDCs would have to post for bidding all releases of between 31 days and one year that are made as part of a state retail unbundling program. This would mean that the marketers participating in the program could only obtain the capacity if they matched any third party bid for the capacity.

99. In Order Nos. 637–A and 637–B,[93] the Commission denied the request by LDCs for a blanket exemption from bidding of all capacity releases made as part of state retail unbundling program. The Commission explained that, with the price ceiling removed, posting and bidding was necessary to protect against undue discrimination and ensure that the capacity is properly allocated to the shipper placing the greatest value on the capacity. The Commission nevertheless sought to accommodate the state retail access programs by providing that, if an LDC considered an exemption from bidding essential to further a state retail unbundling program, the LDC, together with its state regulatory agency, could request a waiver of the bidding regulation to allow the LDC to consummate pre-arranged capacity release deals at the maximum rate. However, the Commission stated that, if the LDC made such a request, it had to be prepared to have all its capacity release transactions, including those not made as part of the state retail unbundling program, subject to the maximum rate.

100. On appeal of Order No. 637, the court in *INGAA* affirmed the Commission's refusal to grant a blanket waiver of the bidding requirement for releases made as part of a state retail unbundling program. The court stated that, absent a showing that the retail unbundling programs are structured as largely to moot the Commission's concern about discrimination, the Commission's caution in granting a blanket waiver was reasonable. However, the court remanded the issue of the reasonableness of the condition that an LDC seeking a waiver must agree to subject all its releases to the maximum rate. The court stated that the requirement of state regulatory endorsement of the requested waiver seemed to give the Commission an avenue to verify the discrimination risk. The Commission did not address this issue in its order on remand, because the price ceiling had been re-imposed by the time of the remand order, thus rendering the issue moot.

101. Several commenters in the instant proceeding again assert that, if the Commission removes the price ceiling on capacity release, the Commission should exempt all capacity releases to retail choice providers, that is, releases that are part of a state approved unbundling program, from the Commission's bidding requirements. AGA and several individual member LDCs, for example, contend that the Commission recognized the value of retail choice programs to the development of a competitive natural gas market by providing a waiver procedure for such releases in Order No. 637–A. AGA argues that the Commission should now take the next step to allow an LDC to release capacity to a retail choice provider at the rate paid by the LDC without bidding and without the need to seek a waiver from the Commission, particularly if the Commission removes the price ceiling on capacity release.[94] It reasons that releases to retail choice providers are not releases of excess capacity but of capacity needed to better serve their core markets or to comply with state requirements. The capacity is still being used for the purpose it was purchased and the intention is to allow the LDC's retail customers to obtain the benefit of the LDCs firm pipeline entitlements and rates. AGA and other LDC commenters assert that requiring the LDCs to seek a waiver, as the Commission did in Order No. 637, adds a cumbersome layer of regulation.

102. Because the state programs generally allow choice providers to step into the shoes of the LDC, commenters suggest that there is little chance for undue discrimination or exercise of market power. Moreover, in order for retail customers to benefit from the discounted or negotiated rates that the LDC may have been able to obtain from the pipeline, the LDC needs to be able to release it to the retail choice provider at that rate. According to the AGA, if a shipper obtained capacity in the primary market under conditions that do not support the pipeline's maximum rate, the Commission's goal of maximizing allocative efficiency is hampered by requiring LDCs to sell at maximum rate to retail choice providers.

103. The Commission proposes to address the issue of bidding on releases of a year or less by LDCs participating in a state retail unbundling program in a manner consistent with its actions in Order No. 637, that is, the Commission will permit such LDCs to request a waiver of the bidding regulation to allow the LDC to consummate short-term pre-arranged capacity release deals necessary to implement retail access at the maximum rate without bidding. Allowing this limited waiver of the bidding requirement for capacity releases made as part of a state unbundling program would enable retail access programs to continue to operate with the same exemption from bidding which they now have. Adopting the more cautious approach of case-by-case waivers, rather than granting a blanket waiver, is reasonable in light of the court's finding that even with state unbundling programs the potential for discrimination still exists.

104. As part of this proposal, however, the Commission will not require that an LDC seeking such a waiver agree to subject all of its short-term capacity releases to the applicable maximum rate. Any of an LDC's capacity releases that are outside of its state-approved retail choice program (and not made as part of an AMA as discussed in the previous section) will remain subject to bidding, which should provide adequate protection against discrimination. Further, it is reasonable to allow different treatment of releases made to an approved retail choice provider, because the capacity released for that purpose will continue to be used to serve the LDC's customers for whom the capacity was originally contracted to serve. The Commission's proposal here would also remedy the court's concern in *INGAA* with the requirement that LDCs seeking waivers agree to subject all of their releases to the maximum rate.

105. While the Commission is not proposing a blanket exemption from bidding for releases made by LDCs under state retail choice programs, the Commission requests comment on whether such releases should be treated as similar to releases made as part of an AMA and thus accorded the same full exemption from bidding. As with releases in the AMA context, LDC releases in the retail unbundling context are not releases of excess capacity to the open market but of capacity needed to serve the original customers for whom the LDC purchased the capacity. In the state unbundling context, the LDC must release and allocate capacity to a marketer that an end use customer may choose as its supplier. Thus, the

[93] Order No. 637–A at 31,569; Order No. 637–B, 92 FERC at 61,163.

[94] *See* AGA Comments at 47.

capacity may be treated as still being used for the purpose it was purchased and as it was originally intended. However, the Commission seeks comment on whether such releases should be exempt from the bidding requirement. Should the Commission find that such releases provide similar benefits to the market as releases which are made as part of establishing an AMA? Do such releases entail a greater potential for undue discrimination than releases made as part of establishing an AMA?

## V. Shipper-Must-Have-Title Requirement

106. The Commission will retain its shipper-must-have-title requirement. While the shipper-must-have-title requirement had its original roots in individual pipeline proceedings to implement Order No. 436 non-discriminatory open-access transportation, it has become the foundation for the Commission's capacity release program.[95] The purpose of the shipper-must-have-title requirement is to require that all transfers of capacity from one shipper to another take place through the capacity release program. Without the shipper-must-have-title requirement, ''capacity holders could simply transport gas over the pipeline for another entity,'' [96] without complying with any of the requirements of the capacity release program. Thus, the capacity holder could charge the other entity any rate it desired for this service, and the capacity holder would not need to post the arrangement with the other entity for bidding to permit others to obtain the service at a higher rate.

107. By contrast, under the shipper-must-have-title requirement, an assignment of capacity from one shipper to another may only be accomplished through the capacity release program. As discussed above, under the capacity release program, any release must comply with any applicable price ceiling and bidding requirements. In addition, the replacement shipper must contract with the pipeline, and section 284.8(d) of the Commission's regulations requires the pipeline to post information regarding the replacement shipper's contract, including any special terms and conditions. This provides transparency in the secondary market by enabling the Commission and all interested parties to monitor the capacity release market.

108. The shipper-must-have-title requirement remains an important transparency tool given the proposals discussed above and the Commission's decision to maintain the price ceiling for long-term capacity releases and to require bidding for capacity releases outside the context of AMAs. If the Commission were to eliminate the shipper-must-have-title requirement, shippers could easily evade the continuing requirements of the capacity release program in the manner discussed above. In essence, participation in the capacity release program would become voluntary and shippers desiring to make long-term releases at more than the maximum rate or to make prearranged non-maximum rate deals without bidding could simply make private arrangements outside of the capacity release program.

109. The shipper-must-have-title requirement ensures transparency in the capacity market. Because replacement shippers must in all instances enter into contracts with the pipeline, the Commission can ensure transparency by requiring the pipelines to report the essential terms of the replacement shippers' contracts. Without the rule, the Commission would have to develop separate reporting requirements for shippers who make private arrangements to ship gas for other entities. It is more efficient for the Commission and the marketplace to monitor and enforce the reporting requirements on the one hundred or so interstate pipelines rather than to enforce them on thousands of shippers.

110. Finally, in the Commission's opinion, the shipper-must-have-title requirement does not cause undue administrative burdens. Through the Commission's adoption of the North American Energy Standards Board's (NAESB) standards, all pipelines must provide a title transfer tracking service at no charge as part of their nomination process, so that any title transfers required by the shipper-must-have-title requirement are easily accomplished.[97]

## VI. Regulatory Requirements

### *A. Information Collection Statement*

111. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[98] Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

*Title:* FERC–549B, Gas Pipeline Rates: Capacity Information.

*Action:* Proposed Information Collection.

*OMB Control No.:* 1902–0169B.

112. The applicant shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

*Respondents:* Business or other for profit.

*Frequency of Responses:* On occasion.

*Necessity of Information:* The proposed rule would permit market based pricing for short-term capacity releases and facilitate AMAs by relaxing the Commission's prohibition on tying and its bidding requirements for certain capacity releases. As noted earlier in the NOPR, elimination of the price ceiling for short-term capacity releases will provide more accurate price signals concerning the market value of pipeline capacity. Further, implementation of AMAs will make the capacity release program more efficient as releasing shippers can transfer their capacity to entities with greater expertise both in purchasing low cost gas supplies, and in maximizing the value of the capacity when it is not needed to meet the releasing shipper's gas supply needs. Such arrangements free up the time, expense and expertise involved with managing gas supply arrangements and serve as a means of relieving the burdens of administering their capacity or supply needs.

113. Although the Commission is taking the steps to enhance competition in the secondary capacity release market and increase shipper options, it is not modifying its existing reporting requirements in section 284.13 of its regulations. The current burden estimates for FERC–549B will be unaffected by this rule and for that reason, the Commission will send a copy of this proposed rule to OMB for informational purposes only.

### *B. Environmental Analysis*

114. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a

[95] As the Commission explained in Order No. 637–A, ''the capacity release rules were designed with [the shipper-must-have-title] policy as their foundation,'' because without this requirement ''capacity holders could simply transport gas over the pipeline for another entity.'' Order No. 637 at 31,300.

[96] Order No. 637 at 31,300.

[97] In this context the shipper-must-have-title requirement accomplishes on the gas side much the same purpose as ''e-tagging'' title transfers on the electric side.

[98] 5 CFR 1320.11.

significant adverse effect on the human environment.[99] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[100] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are corrective, clarifying or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[101] Therefore an environmental review is unnecessary and has not been prepared in this rulemaking.

*C. Regulatory Flexibility Act*

115. The Regulatory Flexibility Act of 1980 (RFA) [102] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such an analysis if proposed regulations would not have such an effect.[103] Under the industry standards used for purposes of the RFA, a natural gas pipeline company qualifies as ''a small entity'' if it has annual revenues of $6.5 million or less. Most companies regulated by the Commission do not fall within the RFA's definition of a small entity.[104]

116. The procedural modifications proposed herein should have no significant negative impact on those entities, be they large or small, subject to the Commission's regulatory jurisdiction under the NGA. As previously noted in the NOPR, removal of the price ceiling will enable releasing shippers to offer competitively-priced alternatives to the pipelines' negotiated rate offerings. A small entity that participates in the market will no longer be constrained by a ceiling price for its unused capacity. Further, removal of the ceiling also permits more efficient utilization of capacity by permitting prices to rise to market clearing levels, allowing those entities that place the highest value on the capacity to obtain it. Accordingly, the Commission certifies that this notice's proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities.

*D. Comment Procedures*

117. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due 45 days from publication in the **Federal Register**. Comments must refer to Docket No. RM08–1–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

118. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

119. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

120. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

*E. Document Availability*

121. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

122. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

123. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202)502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

**List of Subjects in 18 CFR Part 284**

Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

In consideration of the foregoing, the Commission proposes to amend part 284, Chapter I, Title 18, *Code of Federal Regulations,* to read as follows:

## PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

2. Amend § 284.8 as follows:

a. In paragraph (e), remove the words ''(not over the maximum rate)''.

b. Remove paragraph (i).

c. Add two sentences to the end of paragraph (b) and revise paragraph (h) to read as follows.

**§ 284.8 Release of firm capacity on interstate pipelines.**

* * * * *

(b) * * * The rate charged the replacement shipper for a release of capacity for more than one year may not exceed the applicable maximum rate. No rate limitation applies to the release of capacity for a period of one year or less.

* * * * *

(h)(1) A release of capacity by a firm shipper to a replacement shipper for any period of 31 days or less, a release of capacity for more than one year at the maximum tariff rate, or a release to an asset manager as defined in paragraph (h)(3) of this section need not comply with the notification and bidding requirements of paragraphs (c) through (e) of this section. Notice of a firm release under this paragraph must be provided on the pipeline's electronic bulletin board as soon as possible, but not later than forty-eight hours, after the release transaction commences.

[99] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulation Preambles 1986–1990 ¶ 30,783 (1987).

[100] 18 CFR 380.4 (2007).

[101] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5) and 380.4(a)(27) (2007).

[102] 5 U.S.C. 601–612.

[103] 5 U.S.C. 605(b)(2000).

[104] 5 U.S.C. 601(3), *citing* to Section 3 of the Small Business Act, 15 U.S.C. 623 (2000). Section 3 defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

(2) When a release of capacity for 31 days or less is exempt from bidding requirements under paragraph (h)(1) of this section, a firm shipper may not roll-over, extend, or in any way continue the release without complying with the requirements of paragraphs (c) through (e) of this section, and may not re-release to the same replacement shipper under this paragraph at less than the maximum tariff rate until 28 days after the first release period has ended.

(3) A release to an asset manager exempt from bidding requirements under paragraph (h)(1) of this section is any prearranged capacity release that contains a condition that the releasing shipper may, on any day, call upon the replacement shipper to deliver to the releasing shipper a volume of gas equal to the daily contract demand of the released transportation capacity or the daily contract demand for storage withdrawals.

[FR Doc. E7–22952 Filed 11–23–07; 8:45 am]

**BILLING CODE 6717–01–P**

# Notices

Federal Register
Vol. 72, No. 226
Monday, November 26, 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

### Submission for OMB Review; Comment Request

November 20, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (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 agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Food and Nutrition Service**

*Title:* Annual Report of State Revenue Matching.

*OMB Control Number:* 0584–0075.

*Summary Of Collection:* The National School Lunch Program is mandated by the National School Lunch Act, 42 U.S.C. 1751 and the Child Nutrition Act of 1966, 42 U.S.C. 1771. The Food and Nutrition Service (FNS) administer the National School Lunch Program. Under the program, States are required to match 30 percent (or a lesser percent based on per capital income) of the Federal funds made available for the School Lunch Program. Annually, the State agencies are required to report to FNS on FNS–13, Annual Report of State Revenue Matching, the total funds used in order to receive Federal reimbursement for meals served to eligible participants.

*Need and Use of the Information:* The information collected allows FNS to monitor State compliance with the revenue matching requirement. Without the information, States may receive Federal funds, which are not warranted. Monitoring the matching of State funds is essential to preventing fraud, waste, and abuse in the National School Lunch Program.

*Description of Respondents:* State, Local, or Tribal Government.

*Number of Respondents:* 57.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 4,560.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E7–22940 Filed 11–23–07; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

November 20, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (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 agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Grain Inspection, Packers & Stockyards Administration**

*Title:* Regulations and Related Reporting and Recordkeeping Requirements—Packers and Stockyards Programs.

*OMB Control Number:* 0580–0015.

*Summary of Collection:* The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers the provisions of the Packers and Stockyards Act of 1921 (7 U.S.C. 181–229.) and the regulations under the Act. The Act is designed to protect the financial interests of livestock and poultry producers engaged in commerce of livestock and live poultry sold for slaughter. It also protects members of the livestock and poultry marketing, processing, and merchandising industries from unfair competitive

practices. GIPSA will collect information using several forms.

*Need and Use of the Information:* GIPSA will collect information to monitor and examine financial, competitive and trade practices in the livestock, meatpacking, and poultry industries. Also, the information will help assure that the regulated entities do not engage in unfair, unjustly discriminatory, or deceptive trade practices or anti-competitive behavior.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 21,414.

*Frequency of Responses:* Recordkeeping; third party disclosure; reporting: On occasion; semi-annually; annually.

*Total Burden Hours:* 304,655.

**Grain Inspection, Packers & Stockyards Administration**

*Title:* ''Clear Title''—Protection for Purchasers of Farm Products.

*OMB Control Number:* 0580–0016.

*Summary of Collection:* Grain Inspection, Packers and Stockyards Administration (GIPSA) have the responsibility for the Clear Title Program (Section 1324 of the Food Security Act of 1985. Clear Title Program was enacted to facilitate interstate commerce in farm products and protect purchasers of farm products by enabling States to establish central filing systems. The Clear Title Program purpose is to remove burden on and obstruction to interstate commerce in farm products such as double payment for the products, once at the time of purchase and again when the seller fails to repay the lender. The Food Security Act of 1985 permits the states to establish ''central filing systems'. These central filing systems notify buyers of farm products of any mortgages or liens on the products. There are 19 states that currently have certified central filing systems.

*Need and Use of the Information:* A state submits information one time to GIPSA when applying for certification. GIPSA reviews the information submitted by the states to certify that those central filing systems meet the criteria set forth in section 1324 of the Food Security Act of 1985.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 1.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 80.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E7–22941 Filed 11–23–07; 8:45 am]

**BILLING CODE 3410–KD–P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Pennsylvania Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act, that both an orientation meeting and planning meeting of the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights will convene at 11:30 a.m. and adjourn at 2 p.m. on Wednesday, December 19, 2007, in the conference room at the Law Offices of Buchanan Ingersoll & Rooney, 17 North Second Street, 15th Floor, Harrisburg, Pennsylvania 17101–1503.

The purpose of the orientation meeting is to inform members about the rules and procedures applicable to members of the SAC, including federal ethics laws and rules of conduct, and to the operations of SAC meetings. The purpose of the planning meeting is to review civil rights issues in the State and plan future projects.

Members of the public are entitled to submit written comments. The comments must be received in the Eastern Regional Office by January 4, 2008. The address is 624 Ninth Street, NW., Washington, DC 20425. Persons wishing to e-mail their comments, or who desire additional information should contact Alfreda Greene, Secretary, 202–376–7533, TTY 202–376–8116, or by e-mail: *agreene@usccr.gov*.

Hearing impaired persons who will attend the meeting and require the service of a sign language interpreter should contact the Regional Office at least (10) working days before the scheduled date of the meeting.

Records generated from these meetings may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Eastern Regional Office at the above e-mail or street address.

The meetings will be conducted pursuant to the provisions of the rules and regulations of the Commission and the Federal Advisory Committee Act.

Dated in Washington, DC, November 20, 2007.

**Ivy L. Davis,**

*Acting Chief, Regional Programs Coordination Unit.*

[FR Doc. E7–22949 Filed 11–23–07; 8:45 am]

**BILLING CODE 6335–01–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

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

**SUMMARY:** The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

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

**FOR FURTHER INFORMATION CONTACT:** Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, *telephone:* (202) 482–4697.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2007), for administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Carbon and Certain Alloy Steel Wire Rod from Canada.

#### Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than October 31, 2008.

| | Period to be reviewed |
|---|---|
| **Antidumping Duty Proceedings** | |
| *Canada:* Carbon and Certain Alloy Steel Wire Rod, A–122–840 | 10/1/06–9/30/07 |
| Ivaco Rolling Mills 2004 L.P. (formerly Ivaco Rolling Mills L.P.) Sivaco Ontario, a division of Sivaco Wire Group 2004 L.P. (formerly Ivaco, Inc.) Mittal Canada Inc. (formerly Ispat Sidbec Inc.). | |
| *The People's Republic of China:* Certain Helical Spring Lock Washers [1] A–570–822 | 10/1/06–9/30/07 |
| Hangzhou Spring Washer, Co., Ltd. | |
| T*he People's Republic of China:* Polyvinyl Alcohol [2] A–570–879 | 10/1/06–9/30/07 |
| Sinopec Sichuan Vinylon Works | |
| *Trinidad and Tobago:* Carbon and Certain Alloy Steel Wire Rod A–274–804 | 10/1/06–9/30/07 |
| Mittal Steel Point Lisas Limited | |
| **Countervailing Duty Proceedings** | |
| None. | |
| **Suspension Agreements** | |
| None. | |

[1] If the above-named company does not qualify for a separate rate, all other exporters of Certain Helical Spring Lock Washers from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

[2] If the above-named company does not qualify for a separate rate, all other exporters of Polyvinyl Alcohol from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: November 14, 2007.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E7–22970 Filed 11–23–07; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A–475–703**

## Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy

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

**EFFECTIVE DATE:** November 26, 2007.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on granular polytetrafluoroethylene (PTFE) resin from Italy, covering the period August 1, 2005, through July 31, 2006. The review covers one producer/exporter of the subject merchandise, Solvay Solexis, Inc. and Solvay Solexis S.p.A. (collectively, Solvay Solexis). Based on our analysis of the comments received, we have made no changes in the margin calculation for these final results.

**FOR FURTHER INFORMATION CONTACT:** Salim Bhabhrawala, at (202) 482–1784; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

### Background

On September 29, 2006, the Department published the notice of initiation of this antidumping duty administrative review, covering the period August 1, 2005, through July 31, 2006 (the period of review, or POR). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 57465 (September 29, 2006).

On July 20, 2007, the Department published the preliminary results of its administrative review of the antidumping duty order on Granular PTFE Resin from Italy. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy*, 72 FR 39790 (July 20, 2007) (*Preliminary Results*). We invited parties to comment on the *Preliminary Results*. On September 5, 2007, we received a case brief from Solvay Solexis. On September 11, 2007, we received a rebuttal brief from the petitioner.[1]

### Scope of the Review

The product covered by this order is granular PTFE resin, filled or unfilled. This order also covers PTFE wet raw polymer exported from Italy to the United States. *See Granular Polytetrafluoroethylene Resin From Italy; Final Affirmative Determination of Circumvention of Antidumping Duty Order*, 58 FR 26100 (April 30, 1993). This order excludes PTFE dispersions in water and fine powders. During the period covered by this review, such merchandise was classified under item number 3904.61.00 of the Harmonized Tariff Schedule of the United States (HTSUS). We are providing this HTSUS number for convenience and Customs and Border Protection (CBP) purposes only. The written description of the scope remains dispositive.

[1] The petitioner is E.I. DuPont de Nemours & Company (DuPont).

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (*Decision Memorandum*) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated November 15, 2007, which is hereby adopted by this notice. Attached to this notice, as an appendix, is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this memorandum, which is on file in the Central Records Unit (CRU), Room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Import Administration website at *ia.ita.doc.gov\frn*. The paper copy and the electronic version of the *Decision Memorandum* are identical in content. Because the margin calculation for Solvay Solexis has not changed from the preliminary results, the preliminary calculations placed on the record of this administrative review are adopted as the final margin calculations.

**Final Results of Review**

As a result of our review, we determine that the following weighted–average margin exists for the period of August 1, 2005, through July 31, 2006:

| Producer | Weighted–Average Margin (Percentage) |
|---|---|
| Solvay Solexis, Inc. and Solvay Solexis S.p.A (collectively, Solvay Solexis) ..... | 35.35 |

**Assessment Rates**

The Department shall determine, and the CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer–specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. Where the importer–specific assessment rate is above *de minimis*, we will instruct CBP to assess antidumping duties on that importer's entries of subject merchandise. The Department intends to issue appropriate instructions to CBP 15 days after the publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the period of review produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

**Cash Deposit Requirements**

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Tariff Act of 1930, as amended (the Act): (1) for the exporter/manufacturer covered by this review, the cash deposit rate will be the rate listed above; (2) for merchandise exported by producers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company–specific rate published in the most recent final results in which that producer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the most recent final results in which that producer participated; and (4) if neither the exporter nor the producer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 46.46 percent, the ''all–others'' rate established in the less–than-fair–value investigation. *See Final Determination of Sales at Less Than Fair Value: Granular Polytetrafluoroethylene Resin From Italy*, 53 FR 26096 (July 11, 1988). These deposit requirements shall remain in effect until further notice.

**Notification to Importers**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

**Notification to Interested Parties**

This notice is also the reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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

Dated: November 15, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

**Appendix**

*Comment 1:* Calculation of Solvay Solexis' General and Administrative (G&A) Expense Ratio

*Comment 2:* Offsets for Non–Dumped Sales

[FR Doc. E7–22968 Filed 11–23–07; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD97**

### Endangered Species; File No. 10022

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Raymond Carthy, Department of Wildlife Ecology and Conservation, University of Florida, P.O. Box 110485, Gainesville, Florida 23611–0450, has applied in due form for a permit to take loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles for purposes of scientific research.

**DATES:** Written, telefaxed, or e-mail comments must be received on or before December 26, 2007.

**ADDRESSES:** The application and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 10022.

**FOR FURTHER INFORMATION CONTACT:** Patrick Opay or Amy Hapeman, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The purpose of the proposed research is to determine the significance of Florida's northwest coastal bays to sea turtle development. The applicant would assess sea turtle population abundance and composition, determine size classes, evaluate growth, identify seasonal movements, define overwintering behaviors, investigate developmental migration, and further assess affects of cold-stunning events on sea turtles in the area. The applicant requests authorization to conduct research off the northwest coast of Florida for 5 years. Researchers would capture up to 40 loggerhead, 600 green, and 110 Kemp's ridley sea turtles using strike-net, set-net, or hand capture techniques. Animals would be weighed, measured, photographed, skin biopsied, flipper and Passive Integrated Transponder tagged, and released.

Dated: November 16, 2007.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E7–22953 Filed 11–23–07; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No. 071018607–7707–02]**

### NOAA Cooperative Institutes (CIs): (1) Alaska and Related Arctic Regions Environmental Research and (2) Earth System Modeling for Climate Applications

**AGENCY:** Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice; Correction.

**SUMMARY:** On October 24, 2007, the Office of Oceanic and Atmospheric Research (OAR) published a notice of availability of funds to establish two new NOAA cooperative institutes (CIs): (1) Alaska and Related Arctic Regions Environmental Research and (2) Earth System Modeling for Climate Applications (72, FR 60317). That notice contained a typographical error in the discussion under the heading ''Earth System Modeling for Climate Applications CI.'' This notice corrects the error.

**FOR FURTHER INFORMATION CONTACT:** Dr. John Cortinas, 1315 East West Highway, Room 11326, Silver Spring, Maryland 20910; telephone 301–734–1090. Facsimile: (301) 713–3515; e-mail: *John.Cortinas@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

#### Correction

The sixth sentence of the section entitled, ''Earth System Modeling for Climate Applications CI'' contained a typographical error. The sentence, ''The proposed Alaska CI should possess outstanding capabilities to provide research under three themes: (1) Earth system modeling and analysis, (2) data assimilation, and (3) earth system modeling applications'' is corrected to read, ''The proposed Earth System Modeling CI should possess outstanding capabilities to provide research under three themes: (1) Earth system modeling and analysis, (2) data assimilation, and (3) earth system modeling applications.''

All other requirements and information listed in the original notice remain the same.

*Classification:* Pre-Award Notification Requirements for Grants and Cooperative Agreements.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

#### Limitation of Liability

Funding for years 2–5 of the Cooperative Institute is contingent upon the availability of appropriated funds. In no event will NOAA or the Department of Commerce be responsible for application preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

#### Paperwork Reduction Act

This notification involves collection of information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF–LLL and CD–346 has been approved by the Office of Management and Budget (OMB) respectively under control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046 and 0605–0001. Notwithstanding any other provision of law, no person is required for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB Control Number.

#### Executive Order 12866

It has been determined that this notice is not significant for purposes of Executive Order 12866.

#### Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

#### Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comments are not

required pursuant to U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and none has been prepared.

Dated: November 14, 2007.

**Mark E. Brown,**

*Chief Financial Officer, Oceanic and Atmospheric Research, National Oceanic and Atomspheric Administration.*

[FR Doc. 07–5828 Filed 11–23–07; 8:45 am]

**BILLING CODE 3510–KD–M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD16**

### Marine Mammals; File No. 782–1702

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

**ACTION:** Notice; issuance of permit amendment.

**SUMMARY:** Notice is hereby given that NMFS National Marine Mammal Laboratory, 7600 Sand Point Way, NE, Seattle, WA 98115–0070 has been issued an amendment to scientific research Permit No. 782–1702.

**ADDRESSES:** The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

**FOR FURTHER INFORMATION CONTACT:** Tammy Adams or Kate Swails, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** On October 10, 2007, notice was published in the **Federal Register** (72 FR 57524) that an amendment of Permit No. 782–1702 had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The amended permit adds authorization to conduct additional activities on up to 20 adult harbor seals (*Phoca vitulina*) annually in Washington and Oregon. These seals, excluding pregnant or lactating females, would receive gas anesthesia following capture, have stomach temperature transmitters inserted via stomach intubation, and have an external data logger attached externally. The purpose of the additional protocols is to augment current studies on harbor seal diet and abundance. This amendment would not result in capture or disturbance of marine mammals beyond those numbers already authorized by the subject permit, which was issued on September 16, 2003 (68 FR 58663).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: November 19, 2007.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E7–22954 Filed 11–23–07; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648–XD90**

### Caribbean Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

**DATES:** The meetings will be held on December 11–12, 2007. The Council will convene on Tuesday, December 11, 2007, from 9 a.m. to 5 p.m., and the Administrative Committee will meet from 5:15 p.m. to 6 p.m., on that same day. The Council will reconvene on Wednesday, December 12, 2007, from 9 a.m. to 5 p.m., approximately.

**ADDRESSES:** The meetings will be held at the Marriott Frenchman's Reef & Morning Star Hotel, 5 Estate Bakkeroe, St. Thomas, U.S.V.I

**FOR FURTHER INFORMATION CONTACT:** Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920; telephone: (787) 766–5926.

**SUPPLEMENTARY INFORMATION:** The Council will hold its 126th regular public meeting to discuss the items contained in the following agenda:

**December 11, 2007 - 9 a.m. - 5 p.m.**

Call to Order
Adoption of Agenda
Consideration of 125th Council Meeting Verbatim Transcription
Executive Director's Report
Nassau Grouper Initiative
Scoping Meetings Report - Graciela Garcia-Moliner
Scientific and Statistical Committee (SSC) Report - Barbara Kojis
MRIP - John Boreman
USVI Marine Debris Removal Project

**December 11, 2007 - 5:15 p.m. - 6 p.m.**

Administrative Committee Meeting
-AP/SSC/HAP Membership
-Budget 2007
-SOPPs Amendment
Other Business

**December 12, 2007 - 9 a.m. - 5 p.m.**

Caribbean HMS Regulatory Planning and Issues Discussion - Russell Dunn
Navassa Island
Enforcement Reports
-Puerto Rico
-U.S. Virgin Islands
-NOAA
-US Coast Guard
Administrative Committee Recommendations
Meetings Attended by Council Members and Staff
Other Business
Next Council Meeting

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities.

For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: November 20, 2007.

**Tracey L. Thompson,**

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

[FR Doc. E7–22943 Filed 11–23–07; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

**Docket No. 071018612–7613–01**

### Privacy Act of 1974; System of Records

**AGENCY:** National Telecommunications and Information Administration (NTIA), Department of Commerce

**ACTION:** Notice of a New Privacy Act System of Records: COMMERCE/NTIA–1, Applications Related to Coupons for Digital-to-Analog Converter Boxes

**SUMMARY:** This notice announces the Department of Commerce's (Department) proposal for a new system of records under the Privacy Act. The National Telecommunications and Information Administration (NTIA) is creating a new system of records for applications related to coupons for the Digital-to-Analog Converter Box program. Information will be collected from individuals under the authority of Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109–171, 120 Stat. 4, 21 (Feb. 8, 2006) (hereinafter ''the Act'') and pursuant to regulations published by NTIA in 47 C.F.R. § 301. This new system of records is necessary to identify those households that qualify for and receive coupons towards the purchase of a digital-to-analog converter box.

**DATES:** To be considered, written comments must be submitted on or before December 26, 2007. Unless comments are received, the new system of records will become effective as proposed on the date of publication of a subsequent notice in the **Federal Register**.

**ADDRESSES:** Written comments may be mailed to Stacy Cheney, Attorney-Advisor, Office of the Chief Counsel, National Telecommunications and Information Administration, Room 4713, 1401 Constitution Avenue, N.W., Washington, DC 20231. Paper submissions should also include on a three and one-half inch computer diskette an electronic version of the comments in HTML, ASCII, Word, or WordPerfect format. Diskettes should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program (and version) used to create the document. In the alternative, comments may be submitted electronically to the following electronic mail address: sor-comments@ntia.doc.gov. Comments submitted via electronic mail also should be submitted in one or more of the formats specified above. Comments will be posted on NTIA's website at www.ntia.doc.gov/.

**FOR FURTHER INFORMATION CONTACT:** Stacy Cheney, Attorney-Advisor, Office of the Chief Counsel, National Telecommunications and Information Administration, Room 4713, 1401 Constitution Avenue, N.W., Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** NTIA is creating a new system of records for applications related to coupons for the Digital-to-Analog Converter Box program. The Digital Television and Public Safety Act of 2005 provides that households may receive coupons towards the purchase of digital-to-analog converter boxes by making a request as required by Section 301 of NTIA's regulations. 47 C.F.R. § 301. The regulations permit households to request these coupons through an application process. Converter boxes are an option for consumers who wish to continue receiving full-power broadcast programming over the air using analog-only television sets after February 17, 2009 the date the law requires full-power television stations to cease analog broadcasting. Without converter boxes, consumers with analog-only television sets not served by cable, satellite, or other pay service will be unable to view digital television broadcasts over the air.

To help consumers who wish to continue receiving over-the-air broadcast programming using analog-only televisions not connected to cable or satellite service, Congress passed the Act which authorized NTIA to create a digital-to-analog converter box assistance program. The Act states that, as part of the program, eligible U.S. households may obtain no more than two coupons worth $40 each to apply towards the purchase of CECBs. To implement the Act's requirements, NTIA published regulations in 47 C.F.R. § 301 setting forth the household application process.

To support effective implementation of the program, the Act and the regulations require certain information to be collected from households that request coupons. Personally identifiable information will be collected. The personal information collected is pertinent to the implementation of the coupon program and will only be used for the coupon program. See 47 C.F.R. § 301.

**COMMERCE/NTIA–1**

**SYSTEM NAME:** Applications Related to Coupons for Digital-to-Analog Converter Boxes

**SECURITY CLASSIFICATION:** None.

**SYSTEM LOCATIONS:** Converter Box Applicants' Household Information will be maintained by NTIA's Contractor, International Business Machines (IBM) at its Place(s) of Performance: Kansas City, KS; Wichita, KS; and Beverton, OR.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:** Households.

**CATEGORIES OF RECORDS IN THE SYSTEM --The following information is collected and/or maintained by NTIA and/or its Contractor:** *Households.* 47 C.F.R. § 301 requires consumers to submit an application to NTIA's Contractor that contains the following information to demonstrate the household's eligibility to receive a digital-to-analog converter box coupon: (1) name; (2) address; (3) the number of coupons requested; and (4) a certification as to whether the household receives cable, satellite, or other pay television.

**AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:** Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109–171, 120 Stat. 4, 21 (Feb. 8, 2006).

**PURPOSES(S):** The information is being collected from requesting households so that NTIA may provide the coupons to eligible households via the U.S. Postal Service, as required by the statute. This information is pertinent to the success of the Digital-to-Analog Converter Box program as required by the Act.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

These records may be disclosed as follows:

1. In the event that a system of records maintained by the Department to carry out its functions indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute or contract, or rule, regulation or order issued pursuant thereto, or the necessity to protect an interest of the Department, the relevant records in the system of records may be referred 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 contract, or rule, regulation or order issued pursuant thereto, or protecting the interest of the Department.

2. 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 a Department decision concerning the assignment, hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. A record from this system of records may be disclosed in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

4. A record in this system of records may be disclosed to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

5. A record in this system of records may be disclosed as a routine use to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

6. A record in this system of records may be disclosed to the Department of Justice in connection with determining whether the Freedom of Information Act (5 U.S.C. § 552) requires disclosure thereof.

7. A record in this system of records may be disclosed as a routine use to a contractor of the Department having need for the information in the performance of the contract, but not operating a system of records within the meaning of 5 U.S.C. § 552a(m).

8. A record in 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) 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.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

1. *Storage:* Computerized database; CDs, and paper records are stored in file folders in locked metal cabinets and/or locked rooms.

2. *Retrievability:* Records are organized and retrieved by NTIA's Contractor using an internal identification number or the name of the applicant consumer; however, records can be accessed by any file element or any combination thereof.

3. *Safeguards:* The system of records is stored in a building with doors that are locked during and after business hours. Visitors to the facility must register with security guards and must be accompanied by Federal or authorized Contractor personnel, as applicable, at all times. Records are stored in a locked room and/or a locked file cabinet. Electronic records containing Privacy Act information are protected by a user identification/password. The user identification/password is issued to individuals as authorized by authorized personnel.

All electronic information collected and/or disseminated by NTIA's Contractor adheres to the following Federal Laws, Regulations, Acts, Executive Orders, Special Publications, Guidelines, DOC/NTIA Directives and Policies: DOC's IT Security Program Policy and Minimum Implementation Standards; DOC Information Technology Management Handbook; Appendix III, Security of Automated Information Resources, OMB Circular A–130; the Computer Security Act of 1987 (Pub. L. No. 100–235); DOC Security Manual, Chapter 18; Executive Order 12958, as amended; the Federal Information Security Reform Act of 2002 (Pub. L. No. 107–347); NIST SP 800–18, Guide for Developing Security Plans for Federal Information Systems; NIST SP 800–26, Security Self-Assessment Guide for Information Technology Systems; NIST SP 800–53, Recommended Security Controls for Federal Information Systems; and DOC Procedures and Guidelines in the Information Technology Management Handbook.

4. *Retention and Disposal:* All records are retained and disposed of in accordance with National Archive and Records Administration regulations (36 C.F.R. Chapter XII, Subchapter B - Records Management); Departmental directives and comprehensive records schedules.

**SYSTEM MANAGER(S) AND ADDRESSES:** Anita Wallgren, NTIA, 1401 Constitution Avenue N.W., Room 4809, Washington, DC 20231.

**NOTIFICATION PROCEDURE:** Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the System Manager listed above. Written requests must be signed by the requesting individual. Requestor must make the request in writing and provide his/her name, address, and date of the request and record sought. All such requests must comply with the inquiry provisions of the Department's Privacy Act rules which appear at 15 C.F.R. Part 4, Appendix A.

**RECORD ACCESS PROCEDURES:** Requests for access to records maintained in this system of records should be addressed to the same address given in the Notification section above. **NOTE: COMPLETE RECORDS FOR JOINT APPLICATIONS ARE MADE ACCESSIBLE TO EACH APPLICANT UPON HIS/HER REQUEST.**

**CONTESTING RECORD PROCEDURES:** The Department's rules for access, for contesting contents, and appealing initial determinations by the individual or entity concerned are provided for in 15 C.F.R. Part 4, Appendix A.

**RECORD SOURCE CATEGORIES:** Information in this system will be collected from individuals applying for assistance or from an entity supplying related documentation regarding a certification.

**EXEMPTION CLAIMS FOR SYSTEM:** None.

Dated: November 20, 2007.

**Brenda Dolan,**

*Freedom of Information/Privacy Act Officer, U.S. Department of Commerce.*

[FR Doc. E7–22951 Filed 11–23–07; 8:45 am]

**BILLING CODE 3510–60–S**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board

**AGENCY:** Department of Defense.

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Defense Science Board Task Force on Improvised Explosive Devices (IEDs) Part II will meet in

closed session on February 12–13, 2008; at Strategic Analysis, Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force members will discuss interim findings and recommendations resulting from ongoing Task Force activities. The Task Force will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U. S. national defense posture.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will act as an independent sounding board to the Joint IED organization by providing feedback at quarterly intervals; and develop strategic and operational plans, examining the goals, process and substance of the plans.

The task force's findings and recommendations, pursuant to 41 CFR 102–3.140 through 102–3.165, will be presented and discussed by the membership of the Defense Science Board prior to being presented to the Government's decision maker.

Pursuant to 41 CFR 102–3.120 and 102–3.150, the Designated Federal Officer for the Defense Science Board will determine and announce the **Federal Register** when the findings and recommendations of the February 12–13, 2008, meeting are deliberated by the Defense Science Board.

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed below, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

**FOR FURTHER INFORMATION CONTACT:** MAJ Chad Lominac, USAF, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *charles.lominac@osd.mil*, or via phone at (703) 571–0081.

November 19, 2007.

**L.M. Bynum,**

*OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. E7–22935 Filed 11–23–07; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board

**AGENCY:** Department of Defense.

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** The Defense Science Board Task Force on Improvised Explosive Devices (IEDs) Part II will meet in closed session on March 18–19, 2008; at Strategic Analysis, Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force members will discuss interim findings and recommendations resulting from ongoing Task Force activities. The Task Force will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will act as an independent sounding board to the Joint IED organization by providing feedback at quarterly intervals; and develop strategic and operational plans, examining the goals, process and substance of the plans.

The task force's findings and recommendations, pursuant to 41 CFR 102–3.140 through 102–3.165, will be presented and discussed by the membership of the Defense Science Board prior to being presented to the Government's decision maker.

Pursuant to 41 CFR 102–3.120 and 102–3.150, the Designated Federal Officer for the Defense Science Board will determine and announce in the **Federal Register** when the findings and recommendations of the March 18–19, 2008, meeting are deliberated by the Defense Science Board.

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed below, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

**FOR FURTHER INFORMATION CONTACT:** MAJ Chad Lominac, USAF, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *charles.lominac@osd.mil*, or via phone at (703) 571–0081.

November 19, 2007.

**L.M. Bynum,**

*OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. E7–22936 Filed 11–23–07; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board

**AGENCY:** Department of Defense.

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** The Defense Science Board Task Force on Improvised Explosive Devices (IEDs) Part II will meet in closed session on May 6–7, 2008; at Strategic Analysis, Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force members will discuss interim findings and recommendations resulting from ongoing Task Force activities. The Task Force will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will act as an independent sounding board to the Joint IED organization by providing feedback at quarterly intervals; and develop strategic and operational plans, examining the goals, process and substance of the plans.

The task force's findings and recommendations, pursuant to 41 CFR 102–3.140 through 102–3.165, will be presented and discussed by the membership of the Defense Science

Board prior to being presented to the Government's decision maker.

Pursuant to 41 CFR 102–3.120 and 102–3.150, the Designated Federal Officer for the Defense Science Board will determine and announce in the **Federal Register** when the findings and recommendations of the May 6–7, 2008, meeting are deliberated by the Defense Science Board.

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed below, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

**FOR FURTHER INFORMATION CONTACT:** MAJ Chad Lominac, USAF, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *charles.lominac@osd.mil*, or via phone at (703) 571–0081.

Dated: November 19, 2007.

**L.M. Bynum,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E7–22938 Filed 11–23–07; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board

**AGENCY:** Department of Defense.

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** The Defense Science Board Task Force on Improvised Explosive Devices (IEDs) Part II will meet in closed session on January 16–17, 2008; at Strategic Analysis, Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force members will discuss interim findings and recommendations resulting from ongoing Task Force activities. The Task Force will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will act as an independent sounding board to the Joint IED organization by providing feedback at quarterly intervals; and develop strategic and operational plans, examining the goals, process and substance of the plans.

The task force's findings and recommendations, pursuant to 41 CFR 102–3.140 through 102–3.165, will be presented and discussed by the membership of the Defense Science Board prior to being presented to the Government's decision maker.

Pursuant to 41 CFR 102–3.120 and 102–3.150, the Designated Federal Officer for the Defense Science Board will determine and announce in the **Federal Register** when the findings and recommendations of the January 16–17, 2008, meeting are deliberated by the Defense Science Board.

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed below, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

**FOR FURTHER INFORMATION CONTACT:** MAJ Chad Lominac, USAF, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *charles.lominac@osd.mil,* or via phone at (703) 571–0081.

November 19, 2007.

**L.M. Bynum,**

*OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. E7–22933 Filed 11–23–07; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board

**AGENCY:** Department of Defense.

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** The Defense Science Board Task Force on Improvised Explosive Devices (IEDs) Part II will meet in closed session on April 8–9, 2008; at Strategic Analysis, Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force members will discuss interim findings and recommendations resulting from ongoing Task Force activities. The Task Force will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will act as an independent sounding board to the Joint IED organization by providing feedback at quarterly intervals; and develop strategic and operational plans, examining the goals, process and substance of the plans.

The task force's findings and recommendations, pursuant to 41 CFR 102–3.140 through 102–3.165, will be presented and discussed by the membership of the Defense Science Board prior to being presented to the Government's decision maker.

Pursuant to 41 CFR 102–3.120 and 102–3.150, the Designated Federal Officer for the Defense Science Board will determine and announce in the **Federal Register** when the findings and recommendations of the April 8–9, 2008, meeting are deliberated by the Defense Science Board.

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed below, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

**FOR FURTHER INFORMATION CONTACT:** MAJ Chad Lominac, USAF, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *charles.lominac@osd.mil*, or via phone at (703) 571–0081.

November 19, 2007.

**L.M. Bynum,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E7–22937 Filed 11–23–07; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Board of Visitors, Defense Language Institute Foreign Language Center

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of open meeting.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting will take place:

*Name of Committee:* Board of Visitors, Defense Language Institute Foreign Language Center.

*Date:* December 12 and 13, 2007.

*Time of Meeting:* Approximately 8 a.m. through 4:30 p.m. Please allow extra time for gate security for both days.

*Location:* Defense Language Institute Foreign Language Center and Presidio of Monterey (DLIFLC & POM), Building 614, Conference Room, Monterey, CA 93944.

*Purpose of the Meeting:* The purpose of the meeting is to provide a general orientation to DLIFLC mission and functional areas. In addition, the meeting will involve administrative matters.

*Agenda:* Summary—December 12—The board will be briefed on DLIFLC mission and functional areas. December 13—Board administrative details to include parent committee introduction, board purpose, operating procedures review, and oath. DLIFLC functional areas will be discussed.

*Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. No member of the public attending open meetings will be allowed to present questions from the floor or speak to any issue under consideration by the Board. Although open to the public, gate access is required no later than five days prior to the meeting. Contact the Committee's Designated Federal Officer, below, for gate access procedures.

*Committee's Designated Federal Officer or Point of Contact:* Dr. Robert Savukinas, ATFL–APO–AR, Monterey, CA 93944, *Robert.Savukinas@us.army.mil,* (831) 242–5828.

**SUPPLEMENTARY INFORMATION:** Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public may submit written statements to the Board of Visitors of the Defense Language Institute Foreign Language Center in response to the agenda. All written statements shall be submitted to the Designated Federal Officer of the Board of Visitors of the Defense Language Institute Foreign Language Center, and this individual will ensure that the written statements are provided to the membership for their consideration. Written statements should be sent to: *Attention:* DFO at ATFL–APO–AR, Monterey, CA 93944 or faxed to (831) 242–5146. Statements must be received by the Designated Federal Officer at least five calendar days prior to the meeting. Written statements received after this date may not be provided to or considered by the Board of Visitors of the Defense Language Institute Foreign Language Center until its next meeting.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert Savukinas, ATFL–APO–AR, Monterey, CA 93944, *Robert.Savukinas@us.army.mil,* (831) 242–5828.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. E7–22932 Filed 11–23–07; 8:45 am]

**BILLING CODE 3710–08–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Reefing Assembly for a Circular Parachute

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. U.S. 7,293,742 entitled ''Reefing Assembly for a Circular Parachute'' issued November 13, 2007. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffrey DiTullio at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone; (508) 233–4184 or E-mail: *Jeffrey.Ditullio@natick.army.mil.*

**SUPPLEMENTARY INFORMATION:** Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. E7–22961 Filed 11–23–07; 8:45 am]

**BILLING CODE 3710–08–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7 (a)(I)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to A Live-Attenuated Rift Valley fever virus as a licensed human vaccine to The University of Texas Medical Branch at Galveston, with its principal place of business at 301 University Boulevard, Galveston, TX 77555.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–ZA–J, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808, both at telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (see **ADDRESSES**).

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. E7–22963 Filed 11–23–07; 8:45 am]

**BILLING CODE 3710–08–P**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for the Nourishment of 25,000 feet of Beach in Topsail Beach, Pender County, NC

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Army Corps of Engineers (USACE), Wilmington District, Wilmington Regulatory Field Office has received a request for Department of the Army authorization, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, from the Town of Topsail Beach to conduct a one-time emergency beach fill project to protect oceanfront development and infrastructure until such time that a federally authorized shore protection project can be implemented. At this time, the construction date for the Federal project is uncertain. A Draft General Reevaluation Report—Environmental Impact Statement (GRR–EIS) has been prepared by the USACE and was released for public review and comment in June 2006 (USACE, 2006). Given the current status of the GRR–EIS and the need for Congressional authorization, funding, preparation of plans and specifications, and right-of-way acquisition, the Federal project may not be implemented until Fiscal Year 2010, or possibly later.

**ADDRESSES:** Copies of comments and questions regarding scoping of the DSEIS may be addressed to: U.S. Army Corps of Engineers, Wilmington District, Regulatory Division. ATTN: File Number SAW–2006–40848–071, Post Office Box 1890, Wilmington, NC 28402–1890.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and DSEIS can be directed to Mr. Dave Timpy, Wilmington Regulatory Field Office, *telephone:* (910) 251–4634.

**SUPPLEMENTARY INFORMATION:** The Topsail Emergency Beach Nourishment project was placed on Public Notice on December 15, 2006 and a Notice of Intent issued on December 15, 2006 (71 FR 75511). A Scoping Meeting was held on January 16, 2007. Subsequently, another borrow area has been found. Therefore, this Notice of Intent is issued to include another borrow area into the project.

1. Project Description. The fill placement area will occur between Godwin Avenue on the south to a point 2,000 feet northeast of Topsail Beach/Surf City town limits, a total ocean shoreline length of approximately 25,000 feet. The fill would consist of three sections, a 1,000-foot transition on the south beginning at a point opposite Godwin Avenue, a 22,000-foot main fill section that would extend to the Topsail Beach/Surf City town limits, and a 2,000-foot northern transition (Figure 1). The project design will remain consistent with the Federal design and will involve a berm system to be constructed to a height of 7 feet NGVD. An optimum berm width of 50 feet is proposed. The in-place volume of the beach fill has not been determined but could range between 900,000 to 1,250,000 cubic yards. Offshore sand sources are currently being investigated for sediment compatibility with the native beach material. The offshore borrow areas under consideration include all of the areas within the 3-mile North Carolina territorial limit previously identified by the USACE in the GRR–EIS (Borrow Areas A and B), areas lying outside of the USACE identified borrow areas, and an area designated as Borrow Area X located closer to shore (Figure 1). The navigation channel running through Banks Channel from New Topsail Inlet through Topsail Creek and from Topsail Creek parallel to the barrier island to the Atlantic Intracoastal Waterway (Figure 1) was considered as a potential source for the one-time emergency beach fill project but dismissed due to the small volume of material that would be available. The authorized dimensions of the navigation channel are 80 feet wide at 7 feet below mean low water. During normal maintenance operations, between 50,000 and 200,000 cubic yards are removed and deposited on the south end of Topsail Beach. This relatively small volume of maintenance material would fall well below the emergency project requirements. Furthermore, maintenance dredging is currently being performed in Banks Channel with the dredged material being placed on the south end of Topsail Beach. The current maintenance operation would totally deplete the volume of material available for beach disposal for at least the next two years. Accordingly, the navigation channels running behind Topsail Beach will not be given detailed consideration for the emergency project.

The proposed construction timeframe for the emergency beach fill activities will occur in late calendar year 2008 or early calendar year 2009.

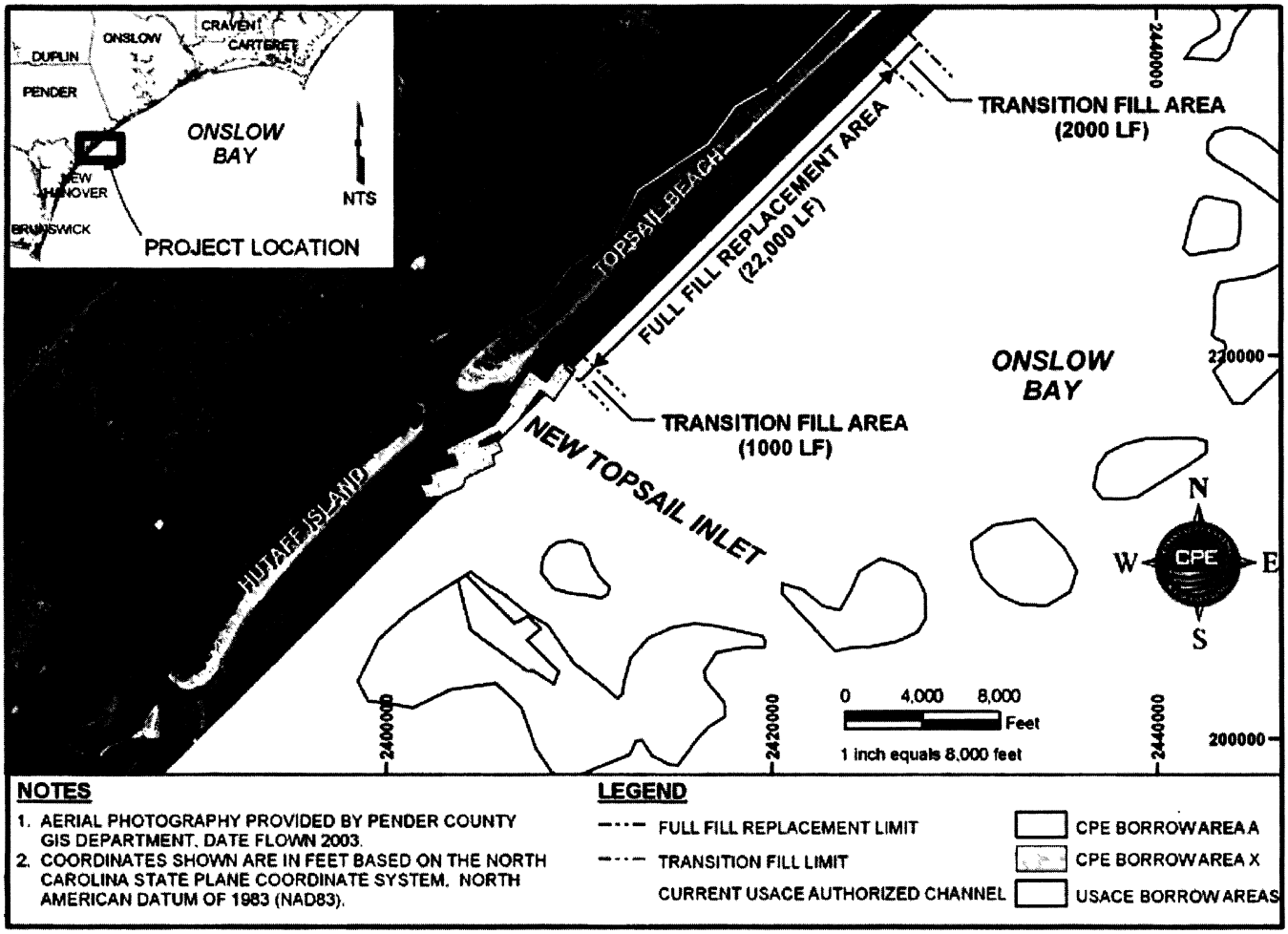


Figure 1. Location map showing all investigated sand sources in the vicinity of Topsail Beach, North Carolina.

Figure 1. Location map showing all investigated sand sources in the vicinity of Topsail Beach, North Carolina.

Beach Fill Surveys & Design. Typical cross-sections of the beach along the Topsail Beach project area will be surveyed. Nearshore profiles will extend seaward to at least the −30-foot NAVD depth contour. The total volume of beach fill to be placed in front of the existing development and infrastructure will be based on an evaluation of erosion of the project area from 2002 through the expected construction date of the Federal project. Additional offshore and inshore data for Hutaff Island will also be obtained along the northern 5,000 feet of the island. This data will be used in the evaluation of possible impacts associated with the removal of sediment from the selected offshore borrow area and for future impact evaluations following project implementation through the use of numerical modeling.

Geotechnical Investigations. The offshore sand search investigations have included bathymetric surveys, sidescan sonar surveys, seismic surveys, cultural resource surveys, vibracore collection and analysis, and ground-truth diver surveys to verify existence or non-existence of hard bottoms. The results of the offshore investigations coupled with the compatibility of the sand resource area and native beach sand will be assessed to define the borrow area. All sediment compatibility assessments will be based on State of North Carolina sediment compatibility standards that went into effect in February 2007.

Environmental Resource Coordination & Permitting. The USACE prepared a General Reevaluation Report—Environmental Impact Statement (GRR–EIS) for the larger Federal shore protection project. The interim (emergency) beach fill project will be subject to Section 10 of the Rivers and Harbors Act, Section 404 of the Clean Water Act and the State Environmental Policy Act (SEPA).

Preliminary coordination with the USACE—Wilmington District resulted in a determination that a Department of the Army Application for an Individual Permit will be needed for project compliance with Sections 10 and 404. Similarly, coordination with the North Carolina Division of Coastal Management (NCDCM) determined that the project would require a State EIS developed in accordance with SEPA; as well as a Major Permit under the Coastal Area Management Act.

2. Proposed Action. The scope of activities for the proposed emergency beach fill project included: (a) Vibracores in the identified borrow area, (b) side scan sonar surveys of the ocean bottom, (c) in-water investigations of potential near shore hard bottom resources identified by the side scan sonar survey, and (d) beach profile surveys. Offshore investigations included bathymetric surveys, sidescan sonar surveys, seismic and cultural resource surveys, as well as vibracore collection and analysis. The results of the offshore investigations coupled with the compatibility of the sand resource area and native beach sand will be assessed to define the borrow area.

3. Issues. There are several potential environmental issues that will be addressed in the DSEIS. Additional issues may be identified during the scoping process. Issues initially identified as potentially significant include:

a. Potential impact to marine biological resources (benthic organisms, passageway for fish and other marine life) and Essential Fish Habitat, particularly Hard Bottoms.

b. Potential impact to threatened and endangered marine mammals, birds, fish, and plants.

c. Potential impacts to water quality.

d. Potential increase in erosion rates to adjacent beaches.

e. Potential impacts to navigation, commercial and recreational.

f. Potential impacts to private and public property.

g. Potential impacts on public health and safety.

h. Potential impacts to recreational and commercial fishing.

i. The compatibility of the material for nourishment.

j. Potential economic impacts.

4. Alternatives. Several alternatives are being considered for the proposed project. These alternatives will be further formulated and developed during the scoping process and an appropriate range of alternatives, including the No Action alternative, will be considered in the Supplemental Draft EIS.

5. Scoping Process. Project Delivery Team meetings will be held to receive comments and assess concerns regarding the appropriate scope and preparation of the DSEIS. Participation in the meeting by federal, state, and local agencies and other interested organizations and persons is encouraged.

The COE will also be consulting with the U.S. Fish and Wildlife Service under the Endangered Species Act and the Fish and Wildlife Coordination Act, and with the National Marine Fisheries Service under the Magnuson-Stevens Act and Endangered Species Act. Additionally, the Supplemental Draft EIS will assess the potential water quality impacts pursuant to Section 401 of the Clean Water Act, and will be coordinated with NCDCM to determine the projects consistency with the Coastal Zone Management Act. The USACE will closely work with NCDCM through the SDEIS to ensure the process complies with all State Environmental Policy Act (SEPA) requirements. It is the USACE and NCDCM's intentions to consolidate both NEPA and SEPA processes to eliminate duplications.

6. Availability of the Draft Supplemental EIS. The DSEIS is expected to be published and circulated in early 2008, and a public hearing will be held after the publication of the DSEIS.

Dated: November 13, 2007.

**John E. Pulliam, Jr.,**

*Colonel, U.S. Army, District Commander.*

[FR Doc. E7–22958 Filed 11–23–07; 8:45 am]

**BILLING CODE 3710–GN–P**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Intent To Prepare a Draft Environmental Impact Statement for Proposed Dam Powerhouse Rehabilitations and Possible Operational Changes at the Wolf Creek, Center Hill, and Dale Hollow Dams, Kentucky and Tennessee

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of intent.

**SUMMARY:** The Corps of Engineers (Corps), Nashville District, will prepare a Draft Environmental Impact Statement (DEIS) relating to proposed dam powerhouse rehabilitations and possible operational changes at the Wolf Creek, Center Hill, and Dale Hollow Dams in Kentucky and Tennessee. The Corps is studying the possible impacts of modifying existing equipment. Due to improvements in technology, rehabilitating the equipment could make it possible to produce more power from the same amount of water discharged. Changes in equipment and operational procedures could also cause higher tailwater heights and velocities, but as there is a limited amount of water they could be for shorter duration. In addition, alterations to flow regimes are being considered to provide minimum flows when hydropower releases are shut off. If improvements are successful, other dams may eventually be considered for similar changes. This study was begun in 2003 and a Notice of Intent was published in the **Federal Register** on September 25, 2003; however, due to funding constraints work ceased before a Draft EIS could be completed. The proposed rehabilitation of the powerhouse and generating units is not related to the dam seepage repairs that are ongoing at Center Hill and Wolf Creek Dams.

**DATES:** Written scoping comments on issues to be considered in the DEIS will be accepted by the Corps of Engineers until December 26, 2007.

**ADDRESSES:** Scoping comments should be mailed to: Mr. Chip Hall, Project Planning Branch, Nashville District Corps of Engineers, P.O. Box 1070 (PM–P), Nashville, TN 37202–1070, or may be e-mailed to *hydropower.rehab@Lrn02.usace.army.miL.*

**FOR FURTHER INFORMATION CONTACT:** For additional information concerning the proposed action and DEIS, please contact Chip Hall, Project Planning Branch, (615) 736–7666.

**SUPPLEMENTARY INFORMATION:** 1. The intent of the DEIS is to provide NEPA compliance for changes in design features and operating procedures of the Wolf Creek, Center Hill, and Dale Hollow Dams in the Cumberland River system. All three dams are of a similar age, have similar turbines and related equipment, and have similar proposed rehabilitation and operational changes. Operating and equipment changes that will be studied could potentially affect more than a combined total 60 miles of tailwaters. This would primarily be a result of efforts to raise dissolved oxygen levels to meet the minimum state water quality standards, although flows and elevations could also be altered for a significant distance. The Cumberland River includes ten dams and reservoirs. The 10 projects are managed as one system with the goal of managing the flow of water through the entire Cumberland River basin. If the proposed changes prove desirable, they could set a precedent for future rehabilitations at other hydropower facilities. The Corps, therefore, proposes to evaluate these dams programmatically.

2. The three dams considered under this Environmental Impact Statement, Wolf Creek Dam, Center Hill Dam, and Dale Hollow Dam, were authorized in the 1930s and constructed in the 1940s before there was a significant concern for environmental protection. They all predate the NEPA, the Clean Water Act, the Fish and Wildlife Coordination Act, and many other related environmental laws and regulations. Together these three Corps projects affect the temperatures, flows, and dissolved oxygen (DO) levels of up to 250 miles of the Cumberland River and its tributaries. The Corps is studying the possible impacts of modifying existing structures or operating procedures to improve DO in the tailwaters. Alterations to flow regimes are being considered to provide minimum flows below the dams when hydropower releases are shut off.

3. Key proposed project features to be evaluated in the DEIS include the following:

a. Rehabilitation of turbines including Auto Venting Turbines to improve DO levels in the tailwaters.

b. Minimum releases to ensure continuous flows between periods of generation.

c. The effects of increased tailwater flows on tailwater parks, downstream fishing areas, adjacent low lying farmlands, erosion of riverbanks, cultural archaeological and historic sites, and changes to the hydraulics and hydrology of the rivers.

d. Other alternatives studied will include: No Action; restoration to the ''original'' 1948 condition; refurbishing existing units; oxygenating water in the dam forebays prior to release; and spilling water through the sluice gates.

4. This notice serves to solicit scoping comments from the public; federal, state and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received during the comment period will be considered in the NEPA process. Comments are used to assess impacts on fish and wildlife, endangered species, historic properties, water quality, water supply and conservation, economics, aesthetics, wetlands, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, general environmental effects, cumulative effects, and in general, the needs and welfare of the people. Public meetings may be held, however, times, dates, or locations have not been determined.

5. Other federal, state and local approvals required for the proposed work include coordination with the U.S. Fish and Wildlife Service.

6. Significant issues to be analyzed in depth in the DEIS include impacts to tailwater fisheries, recreation, economics, water quality, historic and cultural resources, streambank erosion, future power demands, and cumulative impacts. The DEIS should be available in January 2008.

**Bernard R. Lindstrom,**

*Lieutenant Colonel, Corps of Engineers, District Engineer.*

[FR Doc. E7–22959 Filed 11–23–07; 8:45 am]

**BILLING CODE 3710–GF–P**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Availability of Final Bi-National Report for the Great Lakes—St. Lawrence Seaway Study

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Army Corps of Engineers (USACE), Detroit District, is issuing this notice to announce the availability for public review and feedback of the final bi-national report for the Great Lakes—St. Lawrence Seaway (GLSLS) Study. This study was conducted jointly with Canada and was overseen by a steering committee that included representatives from the United States Department of Transportation, Transport Canada, United States Fish and Wildlife Service, Environment Canada, the St. Lawrence Seaway Development Corporation, the United States Army Corps of Engineers, and the St. Lawrence Seaway Management Corporation. The study evaluated the commercial navigation infrastructure needs of the GLSLS as it is currently configured, and does not make any recommendations related to the implementation of any physical project modifications. The study assessed ongoing maintenance and long-term capital requirements to ensure the continuing viability of the system, targeting the engineering, economic and environmental implications of those needs as they pertain to the marine transportation infrastructure upon which commercial navigation depends. The public is invited to provide feedback which will be provided to the above noted partner agencies for their consideration as each assess the study findings related to future system's operation and maintenance.

**DATES:** The Final Report will be available for public review starting November 26, 2007, and any written feedback received by January 18, 2008 will be posted to the study Web site identified below.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Wright, Project Manager, U.S. Army Corps of Engineers, Detroit District, 477 Michigan Avenue, P.O. Box 1027, Detroit, Michigan 48231–1027, at (313) 226–3573 or at *david.l.wright@usace.army.mil.* Written comments are to be provided to Mr. Wright.

**SUPPLEMENTARY INFORMATION:** The report and background information on the study may be viewed on the study Web site: *http://www.glsls-study.com.*

**David L. Wright,**

*Senior Project Manager, GLSLS Study U.S. Co-Manager, USACE-Detroit.*

[FR Doc. E7–22967 Filed 11–23–07; 8:45 am]

**BILLING CODE 3710–GA–P**

## DEPARTMENT OF EDUCATION

### Office of Elementary and Secondary Education Overview Information; Smaller Learning Communities Program; Notice Inviting Applications for New Awards Using Fiscal Year (FY) 2007 Funds

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215L.

**DATES:** *Applications Available:* November 26, 2007.

*Deadline for Notice of Intent to Apply:* January 10, 2008.

*Deadline for Transmittal of Applications:* February 25, 2008.

*Deadline for Intergovernmental Review:* April 24, 2008.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The Smaller Learning Communities (SLC) program awards discretionary grants to local educational agencies (LEAs) to support the implementation of SLCs and activities to improve student academic achievement in large public high schools with enrollments of 1,000 or more students. SLCs include structures such as freshman academies, multi-grade academies organized around career interests or other themes, ''houses'' in which small groups of students remain together throughout high school, and autonomous schools-within-a-school, as well as personalization strategies, such as student advisories, family advocate systems, and mentoring programs.

*Priority:* This priority is from the notice of final priority, requirements, and selection criteria for this program published in the **Federal Register** on May 18, 2007 (72 FR 28426).

*Absolute Priority:* For new awards made using FY 2007 funds and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

*Preparing All Students to Succeed in Postsecondary Education and Careers.*

This priority supports projects that create or expand SLCs that are part of

a comprehensive effort to prepare all students to succeed in postsecondary education and careers without need for remediation.

In order to meet this priority an applicant must demonstrate that, using SLC grant funds or other resources, it will:

(1) Provide intensive interventions to assist students who enter high school with reading/language arts or mathematics skills that are significantly below grade level to ''catch up'' quickly and attain proficiency by the end of 10th grade;

(2) Enroll students in a coherent sequence of rigorous English language arts, mathematics, and science courses that will equip them with the skills and content knowledge needed to succeed in postsecondary education and careers without need for remediation;

(3) Provide tutoring and other academic supports to help students succeed in rigorous academic courses;

(4) Deliver comprehensive guidance and academic advising to students and their parents that includes assistance in selecting courses and planning a program of study that will provide the academic preparation needed to succeed in postsecondary education, early and ongoing college awareness and planning activities, and help in identifying and applying for financial aid for postsecondary education; and

(5) Increase opportunities for students to earn postsecondary credit through Advanced Placement courses, International Baccalaureate courses, or dual credit programs.

*Competitive Preference Priority:* Within this absolute priority, we give competitive preference to applications that address the following priority.

This priority is from the notice of final priorities for discretionary grant programs published in the **Federal Register** on October 11, 2006 (71 FR 60045).

Under 34 CFR 75.105(c)(2)(i) we award an additional 4 points to an application that meets this priority.

This priority is:

*School Districts With Schools in Need of Improvement, Corrective Action, or Restructuring.*

Projects that help school districts implement academic and structural interventions in schools that have been identified for improvement, corrective action, or restructuring under the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001.

**Note:** To meet this priority, a school must receive funds under Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA), and have been identified by a State educational agency as in need of improvement, corrective action, or restructuring at the time the application is submitted.

*Invitational Priority:* For new awards made using FY 2007 funds and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

*Applications That Propose to Engage Faith-Based and Community Organizations in the Delivery of Services Under This Program.*

*Application Requirements:* In the notice of final priorities published in the **Federal Register** on April 28, 2005 (70 FR 22233), we established application requirements in the following areas for competitions conducted under this program: Eligibility; School Report Cards; Consortium Applications and Educational Service Agencies; Student Placement; Including All Students; and Evaluation. In the notice of final priority, requirements, and selection criteria published in the **Federal Register** on May 18, 2007 (72 FR 28426), we established additional application requirements in the following areas: Types of Grants; Budget Information for Determination of Award; Indirect Costs; Performance Indicators; Required Meetings Sponsored by the Department; and Previous Grantees.

These requirements are in addition to the content that all SLC grant applicants must include in their applications as required by the program statute in title V, part D, subpart 4, section 5441(b) of the ESEA.

We have incorporated the terms of these requirements under appropriate sections of this notice (*e.g.*, the Eligibility requirement is listed in section III. Eligibility Information, elsewhere in this notice).

*Definitions:* In addition to the definitions in the authorizing statute and 34 CFR 77.1, the following definitions apply to this program:

*BIE School* means a school operated or supported by the Bureau of Indian Education of the U.S Department of the Interior (DOI). Formerly, these schools were operated or supported by the DOI Bureau of Indian Affairs and were known as ''BIA schools.''

*Large High School* means a public school that includes grades 11 and 12 and has an enrollment of 1,000 or more students in grades 9 and above.

*Smaller Learning Community* (SLC) means an environment in which a core group of teachers and other adults within the school knows the needs, interests, and aspirations of each student well, closely monitors each student's progress, and provides the academic and other support each student needs to succeed.

*Program Authority:* 20 U.S.C. 7249.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99. (b) The notice of final priorities published in the **Federal Register** on April 28, 2005 (70 FR 22233). (c) The notice of final priorities for discretionary grant programs published in the **Federal Register** on October 11, 2006 (71 FR 60045). (d) The notice of final priority, requirements, and selection criteria published in the **Federal Register** on May 18, 2007 (72 FR 28426).

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $88,323,609.

At the time of the initial award, the Department will provide funds for the first 36 months of the performance period. Funding to cover the remaining 24 months will be contingent on the availability of funds and each grantee's substantial progress toward accomplishing the goals and objectives of the project as described in its approved application. Contingent upon the availability of funds and the quality of applications, we may make additional awards using FY 2008 funds from the list of unfunded applicants from this competition.

*Estimated Range of Awards:* $1,250,000–$14,000,000.

The following chart provides the ranges of awards per high school size:

SLC Grant Award Ranges

| Student enrollment | Award ranges per school |
|---|---|
| 1,000–2,000 Students ..... | $1,000,000–$1,250,000 |
| 2,001–3,000 Students ..... | $1,000,000–$1,500,000 |
| 3,001 and Up .... | $1,000,000–$1,750,000 |

*Estimated Average Size of Awards:* $2,208,090 for the first 36 months of the 60-month project period. LEAs may receive, on behalf of a single school, up to $1,750,000, depending upon student

enrollment in the school, during the 60-month project period. To ensure that sufficient funds are available to support awards to LEAs of all sizes, and not only the largest LEAs, we limit to eight the number of schools that an LEA may include in a single application for a grant. LEAs applying on behalf of a group of eligible schools thus could receive up to $14,000,000 per grant. The actual size of awards will be based on a number of factors, including the scope, quality, and comprehensiveness of the proposed project, and the range of awards indicated in the application.

*Maximum Award:* Applications that request more funds than the maximum amounts specified for any school or for the total grant will not be read as part of the regular application process. However, if, after the Secretary selects applications to be funded, it appears that additional funds remain available, the Secretary may choose to read those additional applications that requested funds exceeding the maximum amounts specified. If the Secretary chooses to fund any of those additional applications, applicants will be required to work with the Department to revise their proposed budgets to fit within the appropriate funding range.

*Estimated Number of Awards:* 40.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

## III. Eligibility Information

1. *Eligible Applicants:* Local educational agencies (LEAs), including educational service agencies and BIE schools, applying on behalf of one or more large high schools.

An LEA may apply only on behalf of a school or schools that is not included in an SLC implementation grant that has a performance period that extends beyond the current fiscal year (September 30, 2008).

To be considered for funding, LEAs must identify in their applications the name or names of the eligible large high school or schools and the number of students enrolled in each school. A large high school is defined as one having grades 11 and 12, with 1,000 or more students enrolled in grades 9 and above. Enrollment figures must be based upon data from the current school year.

**Note:** In prior years' competitions, we have also accepted enrollment data from the most recently completed school year, since applications were due after some schools had already completed the school year. This was done in an effort to give applicants the necessary flexibility required by the timing of the competition. However, applications for awards under this competition will be due during the school year and, thus, schools can easily determine enrollment data for the current school year. Further, allowing applicants to use data from the previous school year in these circumstances could result in inaccurate eligibility determinations. Consequently, in an effort to ensure consistent application of the eligibility requirements, applicants must submit data from the current school year to demonstrate that each school included in the application meets the definition of large high school.

We will not accept applications from LEAs applying on behalf of schools that are being constructed and do not have an active student enrollment at the time of application. LEAs may apply on behalf of no more than eight schools.

In an effort to encourage systemic, district-level reform efforts, we permit an individual LEA to submit only one grant application in a competition, specifying in each application which high schools the LEA intends to fund.

In addition, we require that an LEA applying for a grant under this competition apply only on behalf of a high school or high schools for which it has governing authority, unless the LEA is an educational service agency that includes in its application evidence that the entity that has governing authority over the eligible high school supports the application. An LEA, however, may form a consortium with another LEA and submit a joint application for funds. The consortium must follow the procedures for group applications described in 34 CFR 75.127 through 75.129 in EDGAR.

An LEA is eligible for only one grant whether the LEA applies independently or as part of a consortium.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

## IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, or from the program office.

To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from the program office, contact: Angela Hernandez-Marshall, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W236, Washington, DC 20202–6200. *Telephone:* (202) 205–1909 or by *e-mail: smallerlearningcommunities@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* All applicants must include in their applications the information required by the program statute in title V, part D, subpart 4, section 5441(b) of the ESEA. Applicants also must meet the following requirements:

(a) *School Report Cards.* We require that LEAs provide, for each school included in the application, the most recent ''report card'' produced by the State or the LEA to inform the public about the characteristics of the school and its students, including information about student academic achievement and other student outcomes. These ''report cards'' must include, at a minimum, the following information that LEAs are required to report for each school under section 1111(h)(2)(B)(ii) of the ESEA: (1) Whether the school has been identified for school improvement; and (2) Information that shows how the academic assessments and other indicators of adequate yearly progress compare to those indicators for students in the LEA as a whole and also shows the performance of the school's students on statewide assessments.

(b) *Student Placement.* We require applicants for SLC grants to include a description of how students will be selected or placed in an SLC and an assurance that students will not be placed according to ability or any other measure, but will be placed at random or by student/parent choice and not pursuant to testing or other judgments.

(c) *Including All Students.* We require applicants for grants to create or expand an SLC project that will include every student within the school by no later than the end of the fifth school year of implementation. Elsewhere in this notice, we define an *SLC* as an environment in which a group of teachers and other adults within the school knows the needs, interests, and aspirations of each student well, closely monitors each student's progress, and provides the academic and other support each student needs to succeed.

(d) *Performance Indicators.* We require applicants to identify in their application specific performance indicators and annual performance objectives for each of these indicators. Specifically, we require applicants to use the following performance indicators to measure the progress of each school:

(1) The percentage of students who score at or above the proficient level on the reading/language arts and mathematics assessments used by the State to determine whether a school has made adequate yearly progress under part A of title I of the ESEA, as well as these percentages disaggregated by subject matter and the following subgroups:

(A) Major racial and ethnic groups;

(B) Students with disabilities;

(C) Students with limited English proficiency; and

(D) Economically disadvantaged students.

(2) The school's graduation rate, as defined in the State's approved accountability plan for part A of title I of the ESEA.

(3) The percentage of graduates who enroll in postsecondary education, advanced training, or a registered apprenticeship program in the semester following high school graduation.

Applicants must include in their applications baseline data for each of these indicators and identify performance objectives for each year of the project period. We further require recipients of grant funds to report annually on the extent to which each school achieves its performance objectives for each indicator during the preceding school year. We require grantees to include in these reports comparable data, if available, for the preceding three school years so that trends in performance will be more apparent.

Grantees must submit this additional data using the Department's SLC electronic reporting Web site within three months after awards are made.

(e) *Evaluation.* We require each applicant to provide assurances that it will support an evaluation of the project that provides information to the project director and school personnel, and that will be useful in gauging the project's progress and in identifying areas for improvement. Each evaluation must include an annual report for each of the first four years of the project period and a final report that would be completed at the end of the fifth year of implementation and that will include information on implementation during the fifth year as well as information on the implementation of the project across the entire project period. We require grantees to submit each of these reports to the Department.

In addition, we require that the evaluation be conducted by an independent third party, selected by the applicant, whose role in the project is limited to conducting the evaluation.

(f) *Required Meetings Sponsored by the Department.* Applicants must set aside adequate funds within their proposed budget to send their project director and at least two individuals from each school included in the application to a two-day technical assistance meeting in Washington, DC, in each year of the project period. The Department will host these meetings.

(g) *Additional Requirements.* Additional requirements concerning the content of an application for this program, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We encourage you to limit the narrative to the equivalent of no more than 40 pages and suggest that you use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Titles, headings, footnotes, quotations, references, and captions, as well as text in charts, tables, figures, and graphs, can be single spaced.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.
- Number all pages consecutively using the style 1 of 40, 2 of 40, and so forth.
- Include a Table of Contents with page references.

The suggested page limit does not apply to the Table of Contents; forms; the budget section, including the narrative budget justification; the assurances and certifications; the one-page abstract; the resumes; school report cards; the indirect cost agreement; or letters of support. However, the suggested page limit does apply to all of the application narrative section. We further encourage applicants to limit to no more than 20 pages any attachments or appendices that are not resumes; school report cards; the indirect cost agreement; or letters of support.

3. *Submission Dates and Times:*

*Applications Available:* November 26, 2007.

*Deadline for Notice of Intent to Apply:* January 10, 2008. We will be able to develop a more efficient process for reviewing grant applications if we have a better understanding of the number of entities that intend to apply for funding.

Therefore, we strongly encourage each potential applicant to send a notification of its intent to apply for funding to *smallerlearningcommunities@ed.gov* by January 10, 2008. The notification of intent to apply for funding is optional. Applicants that do not supply this e-mail notification may still apply for funding.

*Deadline for Transmittal of Applications:* February 25, 2008.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

*Deadline for Intergovernmental Review:* April 24, 2008.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is the application package for this competition.

5. *Funding Restrictions:* Eligible applicants that propose to use SLC grant funds for indirect costs must include, as part of their applications, a copy of their approved indirect cost agreement. We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

*a. Electronic Submission of Applications*

Applications for grants under the Smaller Learning Communities Program, CFDA Number 84.215L, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Smaller Learning Communities Program at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.215, not 84.215L).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp).* These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you

after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Angela Hernandez-Marshall, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W236, Washington, DC 20202–6200. *Fax:* (202) 205–4921.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

*b. Submission of Paper Applications by Mail*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

*By mail through the U.S. Postal Service:* U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.215L), 400 Maryland Avenue, SW., Washington, DC 20202–4260, or

*By mail through a commercial carrier:* U.S. Department of Education, Application Control Center, Stop 4260, *Attention:* (CFDA Number 84.215L), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

*c. Submission of Paper Applications by Hand Delivery*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.215L), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

*Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

**V. Application Review Information**

*Selection Criteria:* The following selection criteria will be used to evaluate applications for new grants under this program and are from the notice of final priority, requirements, and selection criteria published in the **Federal Register** on May 18, 2007 (72 FR 28426).

**Note:** The maximum score for all selection criteria is 100 points. The points or weights assigned to each criterion or subcriterion are indicated in parentheses.

*Need for the Project (6)*

In determining the need for the proposed project, we will consider the magnitude of the need for the services that will be provided and the activities that will be carried out by the proposed project.

*Quality of the Project Design*

In determining the quality of the design of the proposed project, we will consider the extent to which—

(1) Teachers, school administrators, parents and community stakeholders support the proposed project and have been and will continue to be involved in its development and implementation (5);

(2) The applicant has carried out sufficient planning and preparatory activities to enable it to implement the proposed project during the school year in which the grant award will be made (5);

(3) School administrators, teachers, and other school employees will receive effective, ongoing technical assistance and support in implementing structural and instructional reforms (7);

(4) The applicant will offer all students a coherent sequence of rigorous English language arts, mathematics, and science courses that will provide students with the knowledge and skills needed to succeed in postsecondary education and careers without need for remediation (7); and

(5) The proposed project is part of a districtwide strategy for high school redesign and strengthens the district's capacity to develop and implement smaller learning communities and improve student academic achievement as part of that strategy (1).

*Quality of Project Services*

In determining the quality of the services to be provided by the proposed project, we will consider the extent to which the proposed project is likely to be effective in—

(1) Creating an environment in which a core group of teachers and other adults within the school know the needs, interests, and aspirations of each student well, closely monitor each student's progress, and provide the academic and other support each student needs to succeed (9);

(2) Equipping all students with the reading/English language arts, mathematics, and science knowledge and skills they need to succeed in postsecondary education and careers without need for remediation (8);

(3) Helping students who enter high school with reading/English language arts or mathematics skills that are significantly below grade-level ''catch up'' quickly and attain proficiency by the end of the 10th grade (8);

(4) Providing teachers with the professional development, coaching, regular opportunities for collaboration with peers, and other supports needed to implement a rigorous curriculum and provide high-quality instruction (8);

(5) Increasing the participation of students, particularly low-income students, in Advanced Placement, International Baccalaureate, or dual credit courses (8); and

(6) Increasing the percentage of students who enter postsecondary education in the semester following high school graduation (8).

*Support for Implementation*

In determining the adequacy of the support the applicant will provide for implementation of the proposed project, we will consider the extent to which—

(1) The management plan is likely to achieve the objectives of the proposed project on time and within budget and includes clearly defined responsibilities and detailed timelines and milestones for accomplishing project tasks (7);

(2) The project director and other key personnel are qualified to carry out their responsibilities, and their time commitments are appropriate and adequate to implement the SLC project effectively (4);

(3) The applicant will support the proposed project with funds provided under other Federal or State programs and local cash or in-kind resources (2); and

(4) The requested grant amount and the project costs are sufficient to attain project goals and reasonable in relation to the objectives and design of the project (2).

*Quality of the SLC Project Evaluation*

In determining the quality of the proposed project evaluation to be conducted by an independent, third-party evaluator, we consider the extent to which—

(1) The evaluation will provide timely, regular, and useful feedback to the LEA and the participating schools on the success and progress of implementation, and identify areas for needed improvement (3); and

(2) The independent evaluator is qualified to conduct the evaluation (2).

**VI. Award Administration Information**

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The application requirements and other information related to performance indicators and objectives are described elsewhere in this notice under section IV. Application and Submission Information, 2. *Content and Form of Application Submission.*

**VII. Agency Contact**

*For Further Information Contact:* Angela Hernandez-Marshall, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W236, Washington, DC 20202–6200. *Telephone:* (202) 205–1909 or by *e-mail: smallerlearningcommunities@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

**VIII. Other Information**

*Alternative Format:* Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: November 20, 2007.

**Kerri L. Briggs,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. E7–22957 Filed 11–23–07; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Combined Notice of Filings #1

November 19, 2007.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP96–312–172.

*Applicants:* Tennessee Gas Pipeline Company.

*Description:* Tennessee Gas Pipeline Co. submits a compliance filing re negotiated rate agreement amendments with Boston Gas Co. etc.

*Filed Date:* 11/13/2007.

*Accession Number:* 20071116–0011.

*Comment Date:* 5 p.m. Eastern Time on Monday, November 26, 2007.

*Docket Numbers:* RP96–359–035.

*Applicants:* Transcontinental Gas Pipe Line Corp.

*Description:* Transcontinental Gas Pipe Line Corp. submits two executed service agreements that contain negotiated rates.

*Filed Date:* 11/09/2007.

*Accession Number:* 20071113–0131.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* RP07–179–003.

*Applicants:* Gulf South Pipeline Company, LP.

*Description:* Gulf South Pipeline Company, LP submits Second Sub, Original Sheet 4764 *et. al.* to FERC Gas Tariff, Sixth Revised Volume 1, to be effective 12/17/07.

*Filed Date:* 11/13/2007.

*Accession Number:* 20071116–0008.

*Comment Date:* 5 p.m. Eastern Time on Monday, November 26, 2007.

*Docket Numbers:* RP97–186–004.

*Applicants:* Trunkline Gas Company, LLC.

*Description:* Trunkline Gas Company, LLC submits Second Revised Sheet 28 to FERC Gas Tariff, Third Revised Volume 1, proposed to be effective 12/15/07.

*Filed Date:* 11/14/2007.

*Accession Number:* 20071116–0009.

*Comment Date:* 5 p.m. Eastern Time on Monday, November 26, 2007.

*Docket Numbers:* RP07–630–001.

*Applicants:* East Tennessee Natural Gas, LLC.

*Description:* East Tennessee Natural Gas, LLC submits First Revised Sheet 21A to FERC Gas Tariff, Third Revised Volume 1, effective as of 11/8/07 under RP07–630.

*Filed Date:* 11/08/2007.

*Accession Number:* 20071115–0235.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* RP99–301–172.

*Applicants:* ANR Pipeline Company.

*Description:* ANR Pipeline submits Rate Schedule FTS–3 negotiated rate service agreement with Wisconsin Electric Power Co.

*Filed Date:* 11/14/2007.

*Accession Number:* 20071116–0013.

*Comment Date:* 5 p.m. Eastern Time on Monday, November 26, 2007.

*Docket Numbers:* RP99–513–044.

*Applicants:* Questar Pipeline Company.

*Description:* Questar Pipeline Co submits Second Revised Sheet 7.01 *et. al.* to FERC Gas Tariff, First Revised Volume 1, to be effective 11/1/07.

*Filed Date:* 11/14/2007.

*Accession Number:* 20071116–0012.

*Comment Date:* 5 p.m. Eastern Time on Monday, November 26, 2007.

*Docket Numbers:* RP08–33–001.

*Applicants:* Texas Eastern Transmission LP.

*Description:* Texas Eastern Transmission, LP submits their Fourteenth Revised Sheet 40A, to FERC Gas Tariff, Seventh Revised Volume 1.

*Filed Date:* 11/09/2007.

*Accession Number:* 20071113–0132.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* RP08–62–000.

*Applicants:* Texas Eastern Transmission LP.

*Description:* Texas Eastern Transmission, LP submits its Fourth Revised Sheet 543A to FERC Gas Tariff, Seventh Revised Volume 1.

*Filed Date:* 11/09/2007.

*Accession Number:* 20071113–0134.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 21, 2007.

*Docket Numbers:* RP08–63–000.

*Applicants:* ANR Storage Company.

*Description:* ANR Storage Company submits Fourth Revised Sheet 146 to FERC Gas Tariff, Original Volume 1, effective 12/15/07.

*Filed Date:* 11/13/2007.

*Accession Number:* 20071114–0129.

*Comment Date:* 5 p.m. Eastern Time on Monday, November 26, 2007.

*Docket Numbers:* RP08–64–000.

*Applicants:* Southern Star Central Gas Pipeline, Inc.

*Description:* Southern Star Central Gas Pipeline, Inc submits the Annual Operational Flow Order Report for the period of 12 months ending 9/30/07.

*Filed Date:* 11/15/2007.

*Accession Number:* 20071116–0014.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, November 27, 2007.

*Docket Numbers:* RP08–65–000.

*Applicants:* High Island Offshore System, L.L.C.

*Description:* High Island Offshore System, LLC submits Eleventh Revised Sheet 2 *et. al.* to FERC Gas Tariff, Third Revised Volume 1, effective 12/15/07.

*Filed Date:* 11/14/2007.

*Accession Number:* 20071116–0015.

*Comment Date:* 5 p.m. Eastern Time on Monday, November 26, 2007.

*Docket Numbers:* RP08–66–000.

*Applicants:* Questar Pipeline Company.

*Description:* Questar Pipeline Company submits Forty-Third Revised Sheet 5 *et. al.* to Original Volume 3 of its FERC Gas Tariff.

*Filed Date:* 11/15/2007.

*Accession Number:* 20071116–0051.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, November 27, 2007.

*Docket Numbers:* RP08–67–000.

*Applicants:* Northern Natural Gas Company.

*Description:* Northern Natural Gas Company submits Third Revised Sheet 54B *et. al.* to FERC Gas Tariff, Fifth Revised Volume 1.

*Filed Date:* 11/15/2007.

*Accession Number:* 20071116–0050.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, November 27, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or

call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Acting Deputy Secretary.*

[FR Doc. E7–22950 Filed 11–23–07; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2007–1087; FRL–8340–1]**

## Approval of Test Marketing Exemptions for Certain New Chemicals

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of applications for test marketing exemptions (TMEs) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated these applications as TME–07–11; TME–07–12; TME–07–13; TME–07–14; TME–07–15; TME–07–16; TME–07–17; TME–07–18; TME–07–19; TME–07–20; TME–07–21; TME–07–22; and TME–07–23. The test marketing conditions are described in each TME application and in this notice.

**DATES:** Approval of these TMEs is effective November 15, 2007.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

*For technical information contact*: Adella Underdown, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9364; e-mail address: *underdown adella@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TMEs to EPA. This action may, however, be of interest to the public in general. 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 technical 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 ID number EPA–HQ–OPPT–2007–1087. All documents in the docket are listed in the docket's index at *http://www.regulations.gov*. 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 Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of 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.

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. What is the Agency's Authority for Taking This Action?

Section 5(h)(1) of TSCA and 40 CFR 720.38 authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

### III. What Action is the Agency Taking?

EPA has approved the above referenced TMEs. EPA has determined that test marketing these new chemical substances, under the conditions set out in each TME application and in this notice, will not present any unreasonable risk of injury to health or the environment.

### IV. What Restrictions Apply to These TMEs?

The test market time period, production volume, number of customers, and use must not exceed specifications in the applications and this notice. All other conditions and restrictions described in the applications and in this notice must also be met.

*TME–07–0011*

*Date of Receipt*: February 23, 2007.

*Notice of Receipt*: May 9, 2007 (72 FR 26378) (FRL–8128–4).

*Applicant*: Forbo Adhesives.

*Chemical*: (G) Isocyanate functional polyester polyether urethane polymer.

*Use*: (G) Hot melt polyurethane adhesive.

*Production Volume*: CBI.

*Number of Customers*: CBI.

*Test Marketing Period*: CBI days, commencing on first day of commercial manufacture.

*TME–07–0012*

*Date of Receipt*: March 28, 2007.

*Notice of Receipt*: May 18, 2007 (72 FR 28045) (FRL–8131–5).

*Applicant*: Cytec Industries Inc.

*Chemical*: (G) Acrylated aliphatic polyurethane.

*Use*: (G) Coatings resin.

*Production Volume*: CBI.

*Number of Customers*: CBI.

*Test Marketing Period*: CBI days, commencing on first day of commercial manufacture.

*TME–07–0013*

*Date of Receipt*: May 18, 2007.

*Notice of Receipt*: August 22, 2007 (72 FR 47026) (FRL–8144–7).

*Applicant*: Cytec Industries Inc.

*Chemical*: (G) Substituted heterocycle, polymer with diisocyanate, substituted cyclic diamine and substituted heterocycle, alkyl ester.

*Use*: (G) Wetting agent for industrial coatings.

*Production Volume*: CBI.

*Number of Customers*: CBI.

*Test Marketing Period*: CBI days, commencing on first day of commercial manufacture.

*TME–07–0014*

*Date of Receipt*: June 11, 2007.

*Notice of Receipt*: August 22, 2007 (72 FR 47026) (FRL–8144–7).
*Applicant*: Cytec Industries Inc.
*Chemical*: (G) Unsaturated alkylcarboxylic acid, polymers with alkanedioic acid, alkyl alcohols, alkylaldehyde, substituted triazine, substituted carbomonocycle and urea.
*Use*: (G) Resin for paints and coatings.
*Production Volume*: CBI.
*Number of Customers*: CBI.
*Test Marketing Period*: CBI days, commencing on first day of commercial manufacture.
*TME–07–0015*
*Date of Receipt*: June 18, 2007.
*Notice of Receipt*: August 22, 2007 (72 FR 47026) (FRL–8144–7).
*Applicant*: Forbo Adhesives, LLC.
*Chemical*: (G) Isocyanate functional polyester urethane polymer.
*Use*: (G) Hot melt adhesive.
*Production Volume*: CBI.
*Number of Customers*: CBI.
*Test Marketing Period*: CBI days, commencing on first day of commercial manufacture.
*TME–07–0016*
*Date of Receipt*: July 9, 2007.
*Notice of Receipt*: August 22, 2007 (72 FR 47026) (FRL–8144–7).
*Applicant*: Cytec Industries Inc.
*Chemical*: (G) Substituted alkenoic acid, ester, polymer with alkenamide, hydrolyzed, metal salts.
*Use*: (G) Mining chemical reagent.
*Production Volume*: CBI.
*Number of Customers*: CBI.
*Test Marketing Period*: CBI days, commencing on first day of commercial manufacture.
*TME–07–0017*
*Date of Receipt*: July 11, 2007.
*Notice of Receipt*: August 22, 2007 (72 FR 47026) (FRL–8144–7).
*Applicant*: Cytec Industries Inc.
*Chemical*: (G) Substituted epoxy resin.
*Use*: (G) Ccoating resin additive.
*Production Volume*: CBI.
*Number of Customers*: CBI.
*Test Marketing Period*: CBI days, commencing on first day of commercial manufacture.
*TME–07–0018*
*Date of Receipt*: July 27, 2007.
*Notice of Receipt*: August 22, 2007 (72 FR 47026) (FRL–8144–7).
*Applicant*: SC Johnson and Son, Inc.
*Chemical*: (G) Hydrolyzed cellulosic ether.
*Use*: (G) Non dispersive use.
*Production Volume*: CBI.
*Number of Customers*: CBI.
*Test Marketing Period*: CBI days, commencing on first day of commercial manufacture.
*TME–07–0019*
*Date of Receipt*: August 1, 2007.
*Notice of Receipt*: August 22, 2007 (72 FR 47026) (FRL–8144–7).
*Applicant*: Cytec Industries Inc.
*Chemical*: (G) Substituted epoxy resin.
*Use*: (G) Coating resin additive.
*Production Volume*: CBI.
*Number of Customers*: CBI.
*Test Marketing Period*: CBI days, commencing on first day of commercial manufacture.
*TME–07–0020*
*Date of Receipt*: August 7, 2007.
*Notice of Receipt*: October 3, 2007 (72 FR 56347) (FRL–8151–7).
*Applicant*: CBI.
*Chemical*: (G) Aliphatic polyurethane acrylate.
*Use*: Component of industrial use coating.
*Production Volume*: CBI.
*Number of Customers*: CBI.
*Test Marketing Period*: CBI days, commencing on first day of commercial manufacture.
*TME–07–0021*
*Date of Receipt*: August 17, 2007.
*Notice of Receipt*: October 3, 2007 (72 FR 56347) (FRL–8151–7).
*Applicant*: Forbo Adhesives, LLC.
*Chemical*: (G) Isocyanate functional polyester polyether urethane polymer.
*Use*: (G) Hot melt polyurethane adhesive.
*Production Volume*: CBI.
*Number of Customers*: CBI.
*Test Marketing Period*: CBI days, commencing on first day of commercial manufacture.
*TME–07–0022*
*Date of Receipt*: August 10, 2007.
*Notice of Receipt*: October 3, 2007 (72 FR 56347) (FRL–8151–7).
*Applicant*: Shell Lubricants.
*Chemical*: Mixture of hydrocarbons ($C_{20}$–$C_{110}$) containing straight and branched chain alkanes, produced by synthesis from natural gas (Fischer Tropsch).
*Use*: (G) To replace straight paraffinic petroleum-based waxes in certain industrial applications.
*Production Volume*: 100,000 kg.
*Number of Customers*: 10.
*Test Marketing Period*: 90–365 days, commencing on first day of commercial manufacture.
*TME–07–0023*
*Date of Receipt*: August 29, 2007.
*Notice of Receipt*: October 3, 2007 (72 FR 56347) (FRL–8151–7).
*Applicant*: Cytec Industries Inc.
*Chemical*: (G) Substituted alkenyl-terminated siloxane and silicone polymers with substituted acrylates, peroxide initiated.
*Use*: (G) Flow leveling additive for industrial coatings.
*Production Volume*: CBI.
*Number of Customers*: CBI.*Test Marketing Period*: CBI days, commencing on first day of commercial manufacture.

The following additional restrictions apply to these TMEs. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

## V. What was EPA's Risk Assessment for These TMEs?

EPA identified no significant health or environmental risks for these test market substances based on either the low toxicity of each substance or low expected exposure. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment. (Many of these TMEs were submitted per the *TSCA New Chemicals Sustainable Futures Voluntary Pilot Project;* see The **Federal Register** of December 11, 2002 (67 FR 76282) (FRL–7198–6).

## VI. Can EPA Change Its Decision on These TMEs in the Future?

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

## List of Subjects

Environmental protection, Test marketing exemptions.

Dated: November 15, 2007.

**Miriam Wiggins-Lewis,**

*Acting Chief, New Chemicals Prenotice Management Branch, Office of Pollution Prevention and Toxics.*

[FR Doc. E7–22976 Filed 11–23–07 8:45 am]

**BILLING CODE 6560–50–S**

## EXPORT-IMPORT BANK OF THE U.S.

**[Public Notice 104]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Export-Import Bank of the United States (Ex-Im Bank).

**ACTION:** Notice and Request for Comments.

**SUMMARY:** The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the proposed information collection as required by the Paperwork Reduction Act of 1995.

**SUPPLEMENTARY INFORMATION:** This notice is soliciting comments from the public concerning the proposed collection of information to (1) evaluate whether the proposed collection is necessary for the paper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of collection of information on those who are to respond including through the use of appropriated automated collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

**DATES:** Comments due on or before December 26, 2007.

**ADDRESSES:** Direct all comments to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, NEOB, Room 10202, Washington, DC 20503, (202) 395–3897. Direct all requests for additional information, including copies of the proposed collection of information and documentation to Mimi Tesser, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, *Mimi.Tesser@exim.gov,* (202) 565–3778, or (800) 565–3946, extension 3778.

*OMB Number:* 3048–0012.

*Titles And Form Numbers:* Export-Import Bank of the U.S. Foreign Content Report, EIB 01–02 and Export-Import Bank of the U.S. Cause Report, EIB 01–02–A.

*Type Of Review:* Regular.

*Need And Use:* The information collection allows Ex-Im Bank to monitor its support of the sale of goods and services that contain foreign content. The information requested creates less of a burden on our exporters who previously certified foreign content with each shipment of goods. With the use of the forms, Ex-Im Bank documents the amount of foreign content in transactions through up-front reporting and back-end verification.

*Affected Public:* Business and other for-profit/not-for-profit institutions.

*Respondents:* Entities involved in the export of U.S. goods and services, including exporters, banks, and other non-financial lending institutions that act as facilitators.

*Estimated Annual Respondents:* 600.

*Estimated Time per Respondent:* 2 hours.

*Estimated Annual Burden:* 1,200 hours.

*Frequency Of Response:* On occasion.

Dated: November 19, 2007.

**Solomon Bush,**

*Agency Clearance Officer.*

[FR Doc. 07–5829 Filed 11–23–07; 8:45 am]

**BILLING CODE 6690–01–M**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

November 20, 2007.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 26, 2007. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167, and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* or by U.S. mail to Jerry Cowden, Federal Communications Commission, Room 1–B135, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For additional information contact Jerry Cowden via e-mail at *PRA@fcc.gov* or at 202–418–0447. If you would like to obtain or view a copy of this information collection you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra/collections-review.html.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0957.

*Title:* Requests for waiver of deadline on Location-capable Handset deployment (Fourth Memorandum Opinion and Order in CC Docket No. 94–102).

*Form Nos.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

*Number of Respondents:* 2,500.

*Estimated Time per Response:* 3 hours.

*Frequency of Response:* On occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits.

*Total Annual Burden:* 7,500 hours.

*Total Annual Cost:* None.

*Privacy Impact Assessment:* Not applicable.

*Nature and Extent of Confidentiality:* No confidentiality is required for this collection.

*Needs and Uses:* The Commission's Fourth Memorandum Opinion and Order (FCC 00–326, CC Docket No. 94–102) sets forth guidelines for filing successful requests for waiver of E911 Phase II rules. Wireless carriers are instructed to submit waiver requests that are specific, focused and limited in scope, and with a clear path to compliance. A waiver request must specify the solutions considered and explain why none could be employed in a way that complies to the Phase II

rules. If deployment must be delayed, the carrier should specify the reason for the delay and provide a revised schedule.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7–22955 Filed 11–23–07; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Sunshine Act Meeting; Open Commisssion Meeting; Tuesday, November 27, 2007

November 20, 2007.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, November 27, 2007, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC. The Commission is waiving the sunshine period prohibition contained in section 1.1203 of the Commission's rules, 47 CFR 1.1203, through 5:30 p.m. today, Tuesday, November 20, 2007. Thus, presentations with respect to the items listed below will be permitted until that time.

| Item no. | Bureau | Subject |
|---|---|---|
| 1 | Consumer & Governmental Affairs. | *Title:* Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991. (CG Docket No. 02–278).<br>*Summary:* The Commission will consider a Notice of Proposed Rulemaking concerning extension of the current 5-year registration period for the Do-Not-Call Registry. |
| 2 | Wireline Competition ..... | *Title:* Petition To Establish Procedural Requirements To Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended.<br>*Summary:* The Commission will consider a Notice of Proposed Rulemaking to evaluate the need for rules to govern petitions for forbearance. |
| 3 | Media ..... | *Title:* Promoting Diversification of Ownership in the Broadcasting Services; 2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 (MB Docket No. 06–121); 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 (MB Docket No. 02–277); Cross-Ownership of Broadcast Stations and Newspapers (MM Docket No. 01–235); Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets (MM Docket No. 01–317); Definition of Radio Markets (MM Docket No. 00–244); Ways to Further Section 257 Mandate and To Build on Earlier Studies (MB Docket No. 04–228).<br>*Summary:* The Commission will consider a Report and Order and Third Further Notice of Proposed Rulemaking concerning initiatives designed to increase participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses. |
| 4 | Media ..... | *Title:* Creation of a Low Power Radio Service (MB Docket No. 99–25).<br>*Summary:* The Commission will consider a Third Report and Order concerning the promotion and expansion of low power FM (LPFM) service. |
| 5 | Media ..... | *Title:* Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations (MM Docket No. 00–168).<br>*Summary:* The Commission will consider a Report and Order concerning standardizing and enhancing information provided to the public on how broadcast television stations serve the public interest. |
| 6 | Media ..... | *Title:* Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming (MB Docket No. 06–189).<br>*Summary:* The Commission will consider the Thirteenth Annual Report to Congress on the status of competition in the market for delivery of video programming. |
| 7 | Media ..... | *Title:* Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming.<br>*Summary:* The Commission will consider a Notice of Inquiry seeking comment and information for its Fourteenth Annual Report to Congress on the status of competition in the market for the delivery of video programming. |
| 8 | Media ..... | *Title:* In the Matter of Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage (MB Docket No. 07–42).<br>*Summary:* The Commission will consider a Report and Order concerning modifications to its commercial leased access and program service rules. |

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. In addition, include a way we can contact you if we need more information. Make your request as early as possible; please allow at least 5 days advance notice. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com.*

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events web page at *http://www.fcc.gov/realaudio.*

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 07–5843 Filed 11–21–07; 12:47 pm]

**BILLING CODE 6712–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Notices

**AGENCY:** Federal Election Commission.

**DATE AND TIME:** Tuesday, November 27, 2007 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** Thursday, November 29, 2007 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:**

Correction and approval of minutes.

Advisory opinion 2007–22: Jim Hurysz.

Management and administrative matters.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. 07–5838 Filed 11–21–07; 10:25 am]

**BILLING CODE 6715–01–M**

## FEDERAL MARITIME COMMISSION

**[Docket No. 07–10]**

### Kawasaki Kisen Kaisha, Ltd. v. Fashion Accessories Shippers Association, Inc.; Gemini Shippers Association, Inc.; Sara Mayes; and Harold Sachs; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (''Commission'') by Kawasaki Kisen Kaisha, Ltd. (''K'' Line). Complainant asserts that it is a corporation formed and existing under the laws of the country of Japan and is operating as an ocean common carrier. Complainant asserts that Respondents, Fashion Accessories Shippers Association, Inc. (''FASA''), and Gemini Shippers Association, Inc. (''Gemini'') are Delaware non-profit corporations, that Sara Mayes is President of FASA, and that Harold Sachs is Executive Director of FASA. Complaint asserts that all Respondents are located at 350 Fifth Avenue, Suite 2030, New York, New York 10118.

Complainant contends that FASA purports to act as a shippers association and enters into service contracts with ocean common carriers as ''Gemini Shippers Association.'' Complainant ''K'' Line also contends that it has entered into a number of service contracts with Fashion Accessories Shippers Association and/or Gemini Shippers Association since April 2001. Complainant alleges that it makes ''royalty payments'' by check to Gemini Shippers Association pursuant to the terms of such service contracts. Complainant maintains that under the service contract ''royalty clause,'' Complainant was required to collect from FASA/Gemini member shippers and forward to Respondent Gemini, the ''Gemini Association dues'' which royalty ranged from $40.00 to $70.00 per container. Complainant ''K'' Line also states that it was billed for such royalties on the billhead of ''Gemini Shippers Group.'' Complainant further states that FASA instituted a New York arbitration claiming royalties it would have received had ''K'' Line not directly entered into a service contract with a ''so-called member' and a 'former member' during the 2006–2007 contract term.''

Complainant contends that Respondents are in violation of the Shipping Act of 1984 (''the Shipping Act'') by: (1) Holding themselves out as a shippers' association when it neither organized as a shippers' association nor functions as one as defined by the Shipping Act; (2) requiring that ''royalty payments'' be made by Complainant to Respondents for the ''privilege of carrying cargoes under the contract rates,'' and through such ''royalty payments,'' engaging in a scheme to obtain transportation at less than the otherwise applicable rates; and (3) implementing and enforcing an ''exclusive dealing clause'' that locks shippers into FASA contracts and controls rate levels. Complainant asserts that the activities described above are in violation of the 46 U.S.C. 40102(20), (22) and (23), 41102(a), 41104(10), and the Commission's regulations at 46 CFR 530.8(c).

Complainant requests that the Commission: (1) ''Order Respondents to cease and desist from representing the FASA/Gemini operation, as it presently exits, as a shippers' association''; (2) find the exclusive dealing clause and the royalty clause to be in violation of the Shipping Act and to issue a cease and desist order against Respondents' future use of such clauses; (3) find that FASA/Gemini's New York arbitration or any other means for seeking to enforce the unlawful exclusive dealing and royalty clauses is unlawful; and issue a cease and desist order against any Respondent pursuing the New York arbitration against ''K'' Line or re-instituting any similar arbitration for enforcement of either of the clauses.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by November 18, 2008, and the final decision of the Commission shall be issued by March 18, 2009.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. E7–22972 Filed 11–23–07; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Federal Maritime Commission.

**TIME AND DATE:** November 28, 2007.

**PLACE:** 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Port of Los Angeles and Port of Long Beach Proposed Clean Truck Program.

**CONTACT PERSON FOR MORE INFORMATION:** Bryant L. VanBrakle, Secretary, (202) 523–5725.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 07–5845 Filed 11–21–07; 1:45 pm]

**BILLING CODE 6730–01–M**

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–0163]**

### General Services Administration; Information Collection; Information Specific to a Contract or Contracting Action (Not Required by Regulation)

**AGENCY:** Office of the Chief Acquisition Officer, GSA.

**ACTION:** Notice of request for comments regarding a renewal to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration 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 regarding information specific to a contract or contracting action (not required by regulation). The clearance currently expires on March 31, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

**DATES:** Submit comments on or before: January 25, 2008].

**FOR FURTHER INFORMATION CONTACT:** William Clark, Procurement Analyst, Contract Policy Division, at telephone (202) 219–1813 or via e-mail to *william.clark@gsa.gov*.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0163, Information Specific to a Contract or Contracting Action (Not Required by Regulation), in all correspondence.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The General Services Administration (GSA) has various mission responsibilities related to the acquisition and provision of supplies, transportation, ADP, telecommunications, real property management, and disposal of real and personal property. These mission responsibilities generate requirements that are realized through the solicitation and award of public contracts. Individual solicitations and resulting contracts may impose unique information collection/reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting special program objectives.

**B. Annual Reporting Burden**

*Respondents:* 126,870.
*Responses Per Respondent:* 1.36.
*Total Responses:* 172,500
*Hours Per Response:* .399
*Total Burden Hours:* 68,900
*OBTAINING COPIES OF PROPOSALS:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0163, Information Specific to a Contract or Contracting Action (Not Required by Regulation), in all correspondence.

Dated: November 1, 2007.

**Al Matera,**

*Director, Office of Acquisition Policy.*

[FR Doc. E7–22903 Filed 11–23–07; 8:45 am]

**BILLING CODE 6820–61–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Toxicology Program (NTP); NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); Availability of the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) Test Method Evaluation Report on *In Vitro* Ocular Toxicity Test Methods for Identifying Severe Irritants and Corrosives and Final *In Vitro* Ocular Test Method Background Review Documents; Notice of Transmittal of ICCVAM Test Method Recommendations to Federal Agencies

**AGENCY:** National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

**ACTION:** Availability of ICCVAM Test Method Evaluation Report and Final Background Review Documents.

**SUMMARY:** NICEATM announces availability of the *ICCVAM Test Method Evaluation Report: In Vitro Ocular Toxicity Test Methods for Identifying Severe Irritants and Corrosives* (NIH Publication 07–4517). The report describes four ocular toxicity test methods evaluated by ICCVAM: (1) The Bovine Corneal Opacity and Permeability [BCOP] test, (2) the Isolated Chicken Eye [ICE] test, (3) the Isolated Rabbit Eye [IRE] test, and (4) the Hen's Egg Test—Chorioallantoic Membrane [HET–CAM]. The report includes ICCVAM's (a) final test method recommendations on the use of these four *in vitro* test methods, (b) recommended test method protocols for future testing, (c) recommendations for further optimization and validation studies for these test methods, and (d) recommended reference substances for validation studies. The report recommends that the BCOP and ICE methods, with specific limitations for certain chemical classes and/or physical properties, can be used in a tiered testing strategy to determine ocular hazards, and substances that test positive can be classified as ocular corrosives or severe irritants without further testing in animals. The report also recommends that these *in vitro* test methods should be considered before using animals for ocular testing and used when determined appropriate.

NICEATM also announces availability of the final Background Review Documents (BRDs) for the BCOP, ICE, IRE, and HET–CAM test methods (NIH Publications 06–4512, 06–4513, 06–4514, and 06–4515, respectively). These BRDs provide the data and analyses used to assess the current validation status of these four test methods for identifying ocular corrosives and severe irritants.

Electronic copies of the ICCVAM Test Method Evaluation Report and the four BRDs are available from the NICEATM/ICCVAM Web site at *http://iccvam.niehs.nih.gov* or by contacting NICEATM (see **FOR FURTHER INFORMATION CONTACT**). The ICCVAM Test Method Evaluation Report and the final BRDs have been forwarded to U.S. Federal agencies for regulatory and other acceptance considerations where applicable. Responses will be posted on the ICCVAM/NICEATM Web site as they are received.

**FOR FURTHER INFORMATION CONTACT:** Dr. William S. Stokes, Director, NICEATM,

NIEHS, P.O. Box 12233, MD EC–17, Research Triangle Park, NC 27709, (phone) 919–541–2384, (fax) 919–541–0947, (e-mail) *niceatm@niehs.nih.gov*. Courier address: NICEATM, NIEHS, 79 T.W. Alexander Drive, Building 4401, Room 3128, Research Triangle Park, NC 27709.

**SUPPLEMENTARY INFORMATION:**

**Background**

In 2003, the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM) and U.S. Environmental Protection Agency (EPA) recommended that ICCVAM review the validation status of screening test methods that could be used to identify severe and irreversible ocular effects. ICCVAM unanimously agreed that the four *in vitro* test methods (IRE, ICE, BCOP, and HET–CAM) nominated by EPA should have high priority for evaluation. On March 24, 2004, NICEATM published a **Federal Register** notice (Vol. 69, No. 57, pp. 13859–13861) requesting all available data on these four *in vitro* ocular irritancy test methods and corresponding data from in vivo rabbit eye test methods, as well as any human exposure data (obtained either from ethical human studies or by accidental exposure). NICEATM subsequently compiled data and information on each test method and released four draft BRDs for public comment on November 3, 2004 (**Federal Register**, Vol. 69, No. 212, pp. 64081–64082).

On January 11–12, 2005, NICEATM, on behalf of ICCVAM, convened an expert panel meeting to independently assess the validation status of these four test methods. The panel's report was released in March 2005 (**Federal Register**, Vol. 70, No. 53, pp 13513). Public comments at this meeting indicated that additional data on these *in vitro* test methods could be made available; therefore, the panel recommended that NICEATM obtain the additional data and reanalyze the accuracy and reliability of each test method. On February 28, 2005, NICEATM again solicited *in vitro* data on these four test methods and corresponding in vivo data (**Federal Register**, Vol. 70, No. 38, pp. 9661–9662). The revised analyses were published on July 26, 2005, as an addendum to the draft BRDs (**Federal Register**, Vol. 70, No. 142, pp. 43149).

NICEATM, on behalf of ICCVAM, reconvened the panel on September 19, 2005, to discuss the addendum to the draft BRDs (**Federal Register**, Vol. 70, No. 174, pp. 53676–53677). An addendum to the panel report was published in November 2005 (**Federal Register**, Vol. 70, No. 211, pp. 66451). At its December 2005 meeting, the SACATM discussed and provided comments on the panel report and addendum (**Federal Register**, Vol. 70, No. 216, pp. 68069–68070) (minutes from that meeting are available at *http://ntp.niehs.nih.gov/go/8202*).

ICCVAM considered the expert panel report and its addendum, public comments, SACATM comments, and the draft BRDs and their addendums in finalizing its recommendations on the validation status of these four test methods. The ICCVAM Test Method Evaluation Report includes the ICCVAM recommendations on the use of each test method, as well as recommended test method protocols, recommendations for further optimization and validation studies, recommended reference substances for future validation studies, the panel report and its addendum, and **Federal Register** notices. The four final BRDs, which provide the supporting documentation for this report, are available as separate documents. The ICCVAM Test Method Evaluation Report and the supporting final BRDs were forwarded to U.S. Federal agencies for their consideration for regulatory acceptance as required by the ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3). Agencies' responses to the test method recommendations will be posted on the ICCVAM/NICEATM Web site as they are received.

**Background Information on ICCVAM, NICEATM, and SACATM**

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that use, generate, or disseminate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological test methods that more accurately assess the safety and hazards of chemicals and products and that refine, reduce, and replace animal use. The ICCVAM Authorization Act of 2000 established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM and provides scientific and operational support for ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of U.S. Federal agencies. Additional information about ICCVAM and NICEATM can be found on their Web site (*http://iccvam.niehs.nih.gov*).

SACATM was established January 9, 2002, and is composed of scientists from the public and private sectors (**Federal Register**, Vol. 67, No. 49, page 11358). SACATM provides advice to the Director of the NIEHS, to ICCVAM, and to NICEATM regarding the statutorily mandated duties of ICCVAM and activities of NICEATM. Additional information about SACATM, including the charter, roster, and records of past meetings, can be found at *http://ntp.niehs.nih.gov/* see ''Advisory Board & Committees'' (or directly at *http://ntp.niehs.nih.gov/go/167*).

Dated: November 13, 2007.

**Samuel H. Wilson,**

*Acting Director, National Institute of Environmental Health Sciences and National Toxicology Program.*

[FR Doc. E7–22906 Filed 11–23–07; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–08–08AB]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam Daneshvar, Acting CDC Reports Clearance Officer, 1600 Clifton Road, MS–D 74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

All Age Influenza Hospitalization Surveillance (Flu Hosp)—New—National Center for Immunization and Respiratory Diseases (NCIRD), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

CDC is requesting OMB approval for a data collection system that will assist public health officials to better monitor and assess severe forms of influenza disease resulting in hospitalization. Approval is sought for an Adult Case Report Form and a Pediatric Case Report Form. The Adult Case Report Form will be used to collect information on patients over the age of 18 years old, and the Pediatric Case Report form will be used for patients under 18 years and younger. The primary difference between the two forms is that the Adult Case Report form includes collection of information related to Statin use, and the Pediatric Case Report form does not.

Adult surveillance will consist of two phases, a prospective data collection, and a retrospective discharge audit. Therefore, approval is also sought for forms that will assess the completeness of the surveillance system's cases. These forms make up an Adult discharge audit, which will reveal any limitations in the prospective case identification that will have occurred prior to the discharge audit.

Flu Hosp uses standardized data collection instruments that collect demographic and clinical information from laboratory-confirmed influenza hospitalized adults and children who reside in a geographic- and population-defined area of the United States. The data collection network is an established CDC-state-academic institution collaborative network, the Emerging Infections Program (EIP) which includes the states of California, Colorado, Connecticut, Georgia, Maryland, Minnesota, New Mexico, New York, Oregon, and Tennessee.

From October 1 of this year through April 30 of the following year (the current flu season), Flu Hosp collects data and transmits it to CDC. Case reports are submitted as soon as possible after the investigation of a case. Prompt notification to CDC allows for identification of epidemics and outbreaks so that immediate prevention measures can be taken. Most of the data collection instrument can be completed from review of the hospital medical records. If none of these resources are available, the patient or their proxy may be interviewed.

CDC and its participating partners will also perform a discharge audit to assess the completeness of the case surveillance data by conducting an evaluation of the hospitalized influenza cases found by Flu Hosp versus an independent, administrative hospital dataset. Each of the ten participating sites will complete standardized forms that describe the evaluation process and the number of cases missed by Flu Hosp, in aggregate. Although 10 states participate in Flu Hosp, because New York includes two functionally and geographically different catchment areas, those two areas will submit individual discharge audit data, to make a total of 11 respondents.

The respondents for the data collections are the Flu Hosp participating sites. There are no costs to respondents other than their time for participating.

ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Type of respondent | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| Pediatric Influenza Hospitalization Surveillance Project Case Report Form. | Health Department .... | 10 | 75 | 15/60 | 188 |
| Adult Influenza Hospitalization Surveillance Project Case Report Form. | Health Department .... | 10 | 120 | 15/60 | 300 |
| Adult Discharge Audit Case Report Form ..... | Health Department .... | 11 | 3 | 15/60 | 8 |
| Adult Discharge Audit Form A: Description of Matching Method. | Health Department .... | 11 | 1 | 15/60 | 3 |
| Adult Discharge Audit Form B: Sampling Strategy | Health Department .... | 11 | 1 | 15/60 | 3 |
| Adult Discharge Audit Form C: Summary ..... | Health Department .... | 11 | 1 | 15/60 | 3 |
| Adult Discharge Audit Form D: Future ..... | Health Department .... | 11 | 1 | 15/60 | 3 |
| Total ..... | ..... | ..... | ..... | ..... | 508 |

Dated: November 19, 2007.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E7–22919 Filed 11–23–07; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–08–0692]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

A Survey of the Knowledge, Attitudes and Practice of Medical and Allied Health Professionals Regarding Fetal Alcohol Exposure—Extension—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

This data collection is based on the following components of the Public Health Service Act: (1) Act 42 U.S.C. 241, Section 301, which authorizes ''research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and impairments of man.'' (2) 42 U.S.C. 247b–4, Section 317 C, which authorizes the activities of the National Center on Birth Defects and Developmental Disabilities. This section was created by Public Law 106–310, also known as ''the Children's Health Act of 2000.'' This portion of the code has also been amended by Public Law 108–154, which is also known as the ''Birth Defects and Developmental Disabilities Prevention Act of 2003.''

Maternal prenatal alcohol use is one of the leading, preventable, causes of birth defects and developmental disabilities. Children exposed to alcohol during fetal development can suffer a wide array of disorders, from subtle changes in I.Q. and behaviors to profound mental retardation. These conditions are known as fetal alcohol spectrum disorders (FASDs). The most severe condition within the spectrum is fetal alcohol syndrome (FAS), which involves disorders of the brain, growth retardation, and facial malformations.

Physicians and other health practitioners play a vital role in diagnosing FAS and in screening women of child-bearing age for alcohol consumption and drinking during pregnancy. In Diekman's, *et al.* 2000, study of obstetricians and gynecologists, only one-fifth of doctors surveyed reported abstinence to be the safest way to avoid the adverse outcomes associated with fetal alcohol exposure.[3] Importantly, 13% of doctors surveyed were not sure of levels of alcohol consumption associated with adverse outcomes.[3] One of CDC's multifaceted initiatives in combating alcohol-exposed pregnancies is the education and reeducation of medical and allied health students and practitioners.

In fiscal year 2002, the Centers for Disease Control and Prevention (CDC) received a congressional mandate to develop guidelines for the diagnosis of FAS and other conditions resulting from prenatal alcohol exposure; and to incorporate these guidelines into curricula for medical and allied health students and practitioners [Public Health Service Act Section 317K (247b–12) b and c] (See Appendices A–1, A–2, A–3.)

In response to the second congressional mandate listed above, CDC proposed five national surveys of health providers. In August of 2005, OMB approved these five surveys under control number 0920–0692. The purposes of the surveys are to assess, among various health care provider groups, their knowledge, attitudes, and practices regarding the prevention, identification, and treatment of FASDs. These health care provider groups are pediatricians, obstetrician-gynecologists (OB–GYNs), psychiatrists, family physicians, and allied health professionals. To date, three of the five surveys have yet to be conducted—the survey of allied health professionals, the survey of family physicians, and the survey of pediatricians.

The results of the surveys will help to inform further development of model FASD curricula to disseminate among medical and allied health students and professionals nation wide using a variety of formats including computer interactive learning applications, workshops and conferences, Continuing Medical Education credit courses, and medical and allied health school grand rounds and clerkships. Consistent with OMB's previous terms of clearance, CDC does not expect the results to be generalizable to the larger populations of the professional organizations from which the samples were drawn. Instead, the survey results will provide necessary information to further develop and refine educational materials for medical and allied health students and practitioners and to evaluate their effectiveness. No gifts or compensation will be given to respondents who complete the survey. There is no cost to respondents other than their time.

*Estimate of Annualized Burden Hours*

| Type of respondent | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|
| Pediatricians | 900 | 1 | 25/60 | 375 |
| Obstetrician-Gynecologists | 900 | 1 | 25/60 | 375 |
| Psychiatrists | 900 | 1 | 25/60 | 375 |
| Family Physicians | 900 | 1 | 25/60 | 375 |
| Allied Health Professionals | 900 | 1 | 25/60 | 375 |
| Total | | | | |

Dated: November 16, 2007.

**Marilyn S. Radke,**

*Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E7–22920 Filed 11–23–07; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30 Day–08–06AY]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

**Proposed Project**

Evaluation of the Spanish-Language Campaign *''Good Morning Arthritis, Today You Will Not Defeat Us.''*—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Arthritis affects nearly 43 million Americans, or about one in every five people, and is the leading cause of disability among adults in the United States. Limitations due to arthritis are particularly burdensome when they affect an individual's mobility, productivity, and ability to earn a living, as well as psychological and social well-being. Because of the broad public health impact of this disease, the Centers for Disease Control and Prevention (CDC) developed the National Arthritis Action Plan in 1998 as a comprehensive approach to reducing the burden of arthritis in the United States.

Hispanics are currently the fastest growing racial/ethnic group in the United States. Although Hispanic populations have a slightly lower prevalence rate of self-reported, doctor-diagnosed arthritis than the general population, Hispanics with arthritis report greater work limitations, and higher rates of severe pain than do Caucasian populations with arthritis. CDC has developed a Spanish-language campaign, *Good Morning Arthritis, Today you will not defeat us,* to deliver culturally appropriate public health messages about the benefits of physical activity as an arthritis management strategy. Campaign materials include print ads, 30 and 60 second radio ads and public service announcements, and desktop displays with brochures for pharmacies, doctors' offices, and community centers. The campaign is designed to reach Spanish speaking adults with arthritis who are aged 45–64, who have high school education or less, and whose annual income is less than $35,000. CDC plans to conduct the campaign in four experimental markets.

CDC requests clearance to conduct an evaluation of the campaign by collecting information from Spanish-speaking respondents in the four experimental markets and two control markets. An initial data collection will consist of telephone interviews, and will be based on a pre- and post-campaign evaluation design. A follow-up telephone interview, involving a subset of the initial respondents, will be conducted six months later. Results will be used to guide the public health practice of the 36 CDC-funded state arthritis programs and their partners.

There are no costs to respondents other than their time. The estimated annualized burden hours are 2,730.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| Target Population of Hispanic Adults | Screener for Primary Pre- and Post Campaign Survey. | 60,000 | 1 | 2/60 |
| | Primary Pre- and Post Campaign Survey | 2,400 | 1 | 13/60 |
| | Screener for 6–Month Follow-up Survey | 2,400 | 1 | 2/60 |
| | 6–Month Follow-up Survey | 600 | 1 | 13/60 |

Dated: November 16, 2007.

**Marilyn S. Radke,**

*Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E7–22930 Filed 11–23–07; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket Nos. 2006P–0291, 2006P–0299, 2006P–0298, 2006P–0309, and 2007P–0062]**

### Determination That ELOXATIN (Oxaliplatin for Injection), 50 and 100 Milligrams Per Vial, Sterile Lyophilized Powder for Injection, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined that ELOXATIN (oxaliplatin for injection), 50 and 100 milligrams (mg) per vial, sterile lyophilized powder for injection, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for oxaliplatin sterile lyophilized powder for injection, 50 and 100 mg/vial.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Sadove, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers

Lane, Rockville, MD 20857, 301–594–2041.

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under 21 CFR 314.161(a)(1), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

ELOXATIN (oxaliplatin for injection), 50 and 100 mg/vial, sterile lyophilized powder for injection, is the subject of approved NDA 21–492 held by Sanofi-Aventis. Oxaliplatin sterile lyophilized powder for injection, 50 and 100 mg/vial, is a chemotherapeutic agent indicated for adjuvant treatment of stage III colon cancer patients who have undergone complete resection of the primary tumor. Sanofi-Aventis ceased manufacturing ELOXATIN (oxaliplatin for injection), 50 and 100 mg/vial, sterile lyophilized powder for injection, in June 2006.

FDA received five citizen petitions, submitted under 21 CFR 10.30, requesting that the agency determine whether oxaliplatin sterile lyophilized powder for injection, 50 and 100 mg/vial, was withdrawn from sale for reasons of safety or effectiveness. The petitions were submitted as follows:

- Sicor Pharmaceuticals, Inc., submitted a citizen petition dated July 24, 2006 (Docket No. 2006P–0291/CP1).
- Rothwell, Figg, Ernst & Manbeck, P.C., submitted a citizen petition dated July 24, 2006 (Docket No. 2006P–0299/CP1).
- AAC Consulting Group submitted a citizen petition dated July 25, 2006 (Docket No. 2006P–0298/CP1).
- Frommer Lawrence & Haug LLP submitted a citizen petition dated August 4, 2006 (Docket No. 2006P–0309/CP1).
- Regulus Pharmaceutical Consulting, Inc., submitted a citizen petition dated February 20, 2007 (Docket No. 2007P–0062/CP1).

The agency has determined that ELOXATIN (oxaliplatin for injection), 50 and 100 mg/vial, sterile lyophilized powder for injection, was not withdrawn from sale for reasons of safety or effectiveness. The petitioners have identified no data or other information suggesting that oxaliplatin sterile lyophilized powder for injection, 50 and 100 mg/vial, was withdrawn from sale as a result of safety or effectiveness concerns. FDA's independent evaluation of relevant information has uncovered no information that would indicate this product was withdrawn for reasons of safety or effectiveness.

After considering the citizen petitions and reviewing agency records, FDA determines that for the reasons outlined previously, ELOXATIN (oxaliplatin for injection), 50 and 100 mg/vial, sterile lyophilized powder for injection, was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list ELOXATIN (oxaliplatin for injection), 50 and 100 mg/vial, sterile lyophilized powder for injection, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to ELOXATIN (oxaliplatin for injection), 50 and 100 mg/vial, sterile lyophilized powder for injection, may be approved by the agency as long as they meet all relevant legal and regulatory requirements for the approval of ANDAs. If FDA determines that the labeling of this drug product should be revised to meet current standards, the agency will advise ANDA applicants to submit such labeling.

Dated: November 15, 2007.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E7–22973 Filed 11–23–07; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Collection; Comment Request; Questionnaire Cognitive Interview and Pretesting (ARP/DCCPS/NCI)

**SUMMARY:** In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

*Proposed Collection: Title:* Questionnaire Cognitive Interview and Pretesting. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The purpose of the data collection is to conduct cognitive interviews, focus groups, Pilot household interviews, and experimental research in laboratory and field settings, both for applied questionnaire evaluation and more basic research on response errors in surveys. The most common evaluation method is the cognitive interview, in which a questionnaire design specialist interviews a volunteer participant. The interviewer administers the draft survey questions as written, but also probes the participant in depth about interpretations of questions, recall processes used to answer them, and adequacy of response categories to express answers, while noting points of confusion and errors in responding. Interviews are generally conducted in small rounds of 10–15 interviews. When possible, cognitive interviews are conducted in the survey's intended mode of administration. Cognitive interviewing provides useful information on questionnaire performance at minimal cost and respondent burden. Similar methodology has been adopted by other federal agencies, as well as by academic and commercial survey organizations. There are no costs to respondents other than their time. The total estimated annualized burden hours are 600.

*Frequency of Response:* Once. *Affected Public:* Individuals or households.

| Type of respondents | Projects | Number of respondents | Frequency of responses/ participant | Average hours per response | Response burden |
|---|---|---|---|---|---|
| Questionnaire Development Volunteers. | (1) Survey questionnaire development. | 200 | 1 | 1.25 (75 minutes) | 250.0 |
| General Volunteers | (2) Research on the cognitive aspects of survey methodology. | 100 | 1 | 1.25 (75 minutes) | 125.0 |
| Computer User Volunteers | (3) Research on computer-user interface design. | 100 | 1 | 1.25 (75 minutes) | 125.0 |
| Household Interview Volunteers | (4) Pilot Household interviews | 200 | 1 | 0.5 (30 minutes) | 100.0 |
| Total | | 600 | | | 600.0 |

The estimated total annual burden hours requested is 600. There are no annualized costs to respondents. The annualized costs to the Federal Government are estimated at $264,000 and include cost of NCI staff to plan, conduct, and analyze outcomes of questionnaire development, $50 payment of pretest participants, contracting for pretesting activities and research, travel costs, and additional materials needed to conduct and recruit participants for the research.

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies are invited on 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.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Gordon Willis, PhD., Cognitive Psychologist, Applied Research Program, DCCPS, NCI/NIH, 6130 Executive Blvd, MSC 7344, EPN 4005, Bethesda, MD 20892 or call non-toll-free number 301–594–6652 or e-mail your request, including your address to: *willis@mail.nih.gov.*

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: November 13, 2007.

**Vivian Horovitch-Kelley,**

*NCI Project Clearance Liaison, National Institutes of Health.*

[FR Doc. E7–22905 Filed 11–23–07; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### NIH Consensus Development Conference: Hydroxyurea Treatment for Sickle Cell Disease; Notice

Notice is hereby given of the National Institutes of Health (NIH) ''NIH Consensus Development Conference: Hydroxyurea Treatment for Sickle Cell Disease'' to be held February 25–27, 2008, in the NIH Natcher Conference Center, 45 Center Drive, Bethesda, Maryland 20892. The conference will begin at 8:30 a.m. on February 25 and 26, at 9 a.m. on February 27, and will be open to the public.

Sickle cell disease is an inherited blood disorder that affects between 50,000 and 75,000 people in the United States. It is most common among people whose ancestors come from sub-Saharan Africa, South and Central America, the Middle East, India, and the Mediterranean basin. Sickle cell disease occurs when an infant inherits the gene for sickle hemoglobin from both parents (Hb SS, or sickle cell anemia) or the gene for sickle hemoglobin from one parent and another abnormal hemoglobin gene from the other parent. Each year, approximately 2,000 babies with sickle cell disease are born in the United States. The condition is chronic and lifelong and is associated with a decreased lifespan. In addition, approximately 2 million Americans carry the sickle cell trait, which increases the public health burden as this disorder is passed on to future generations.

The red blood cells in people with sickle cell disease become deoxygenated (or depleted of oxygen) and crescent-shaped or ''sickled.'' The cells become sticky and adhere to blood vessel walls, thereby blocking blood flow within limbs and organs. These changes lead to acute painful episodes, chronic pain, and chronic damage to the brain, heart, lungs, kidneys, liver, and spleen. Infections and lung disease are leading causes of death.

Pain crises are responsible for most emergency room visits and hospitalizations of people with sickle cell disease. Standard treatments for acute pain crises include painkilling medications, fluid replacement, and oxygen. In the mid-1990s, researchers began investigating the potential of hydroxyurea to reduce the number and severity of pain crises in sickle cell patients. Hydroxyurea is in a class of anticancer drugs and it acts to increase the overall percentage of normally structured red blood cells in the circulation. By diluting the number of cells that ''sickle,'' it may, if taken on a daily basis, reduce their damaging effects. Hydroxyurea was approved by the Food and Drug Administration for use in adults with sickle cell anemia in 1998. However, there are a number of unresolved issues about the use of hydroxyurea, including a lack of knowledgeable providers who treat sickle cell disease, and patient and practitioner questions about safety and effectiveness, including concerns regarding potential long-term carcinogenesis.

In order to take a closer look at this important topic, the National Heart, Lung, and Blood Institute and the Office of Medical Applications of Research of

the NIH will convene a Consensus Development Conference from February 25–27, 2008, to assess the available scientific evidence related to the following questions:

- What is the efficacy (results from clinical studies) of hydroxyurea treatment for patients who have sickle cell disease in three groups: Infants, preadolescents, and adolescents/adults?
- What is the effectiveness (in everyday practice) of hydroxyurea treatment for patients who have sickle cell disease?
- What are the short- and long-term harms of hydroxyurea treatment?
- What are the barriers to hydroxyurea treatment (*i.e.*, health care system factors and patient-related factors) for patients who have sickle cell disease and what are the potential solutions?
- What are the future research needs?

An impartial, independent panel will be charged with reviewing the available published literature in advance of the conference, including a systematic literature review commissioned through the Agency for Healthcare Research and Quality. The first day and a half of the conference will consist of presentations by expert researchers and practitioners and open public discussions. On Wednesday, February 27, the panel will present a statement of its collective assessment of the evidence to answer each of the questions above. The panel will also hold a press conference to address questions from the media. The draft statement will be published online later that day, and the final version will be released approximately six weeks later. The primary sponsors of this meeting are the NIH National Heart, Lung, and Blood Institute and the NIH Office of Medical Applications of Research.

Advance information about the conference and conference registration materials may be obtained from American Institutes for Research of Silver Spring, Maryland, by calling 888–644–2667 or by sending e-mail to *consensus@mail.nih.gov*. American Institutes for Research's mailing address is 10720 Columbia Pike, Silver Spring, MD 20901. Registration information is also available on the NIH Consensus Development Program Web site at *http://consensus.nih.gov*.

**Please Note:** The NIH has instituted security measures to ensure the safety of NIH employees and property. All visitors must be prepared to show a photo ID upon request. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter NIH buildings. For more information about the new security measures at NIH, please visit the Web site at *http://www.nih.gov/about/visitorsecurity.htm*.

Dated: November 14, 2007.

**Raynard S. Kington,**

*Deputy Director, National Institutes of Health.*

[FR Doc. E7–22907 Filed 11–23–07; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center on Minority Health and Health Disparities; 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 Center on Minority Health and Health Disparities Special Emphasis Panel, R13 Conference Grant Review.

*Date:* December 19, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Lorrita Watson, PhD., National Center on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd, Suite 800, Bethesda, MD 20892–5465, (301) 402–1366, *watsonl@mail.nih.gov*.

Dated: November 16, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5810 Filed 11–23–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center on Minority Health and Health Disparities; 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 Center on Minority Health and Health Disparities Special Emphasis Panel, Community Based Participatory Research (CBPR) Meeting.

*Date:* December 16–18, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington DC 20015.

*Contact Person:* Robert Nettey, MD., Scientific Review Administrator, National Institute on Minority Health and Health Disparities, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301)–496–3996.

Dated: November 16, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5811 Filed 11–23–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Eye Institute; 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 Eye Institute Special Emphasis Panel, NEI Clinical Grant Application Review.

*Date:* December 3, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Houmam H. Araj, PhD., Scientific Review Administrator, Division of Extramural Research, National Eye Institute, NIH, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892–9602, 301–451–2020, *haraj@mail.nih.gov.*

*Name of Committee:* National Eye Institute Special Emphasis Panel, NEI Translational Research Applications.

*Date:* December 7, 2007.

*Time:* 10 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Eye Institute, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Anne E. Schaffner, PhD., Scientific Review Administrator, Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300, (301) 451–2020, *aes@nei.nih.gov.*

*Name of Committee:* National Eye Institute Special Emphasis Panel, Review of National Eye Institute Training Grants Ts and Ks.

*Date:* December 10, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Samuel Rawlings, PhD., Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300, 301–451–2020, *rawlings@nei.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS).

Dated: November 15, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5813 Filed 11–23–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel, Signaling Pathways in Stages of Mammary Tumorigenesis.

*Date:* December 19, 2007.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park. NC 27709, (Telephone Conference Call).*

*Contact Person:* Janice B. Allen, PhD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, (919) 541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.144, Applied Toxicological Research and Testing, National Institutes of Health, HHS).

Dated: November 16, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5808 Filed 11–23–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; 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 Mental Health Special Emphasis Panel, MLSCN HTS ASSAY.

*Date:* December 14, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

*Contact Person:* Yong Yao, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606, (301) 443–6102, *yyao@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS).

Dated: November 16, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5809 Filed 11–23–07; 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 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Frequent Hemdialysis Network (FHN).

*Date:* January 4, 2008.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* D. G. Patel, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

(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: November 16, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5812 Filed 11–23–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Recombinant DNA Advisory Committee, December 3, 2007, 8 a.m. to December 5, 2007, 10:30 a.m., National Institutes of Health, Building 31, Floor 6C, 31 Center Drive, Conference Room 10, Bethesda, MD, 20892, which was published in the **Federal Register** on November 13, 2007, 72 FR 218 page 63917.

On December 4, 2007, the Recombinant DNA Advisory Committee meeting will be held from 8 a.m. to 11:30 a.m. and begin again at 2:30 p.m. to 5:30 p.m. instead of meeting from 8 a.m. to 3 p.m. The meeting is open to the public.

Dated: November 15, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–5814 Filed 11–23–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Citizenship and Immigration Services Ombudsman; DHS CIS Ombudsman Case Problem Submission

**AGENCY:** Office of the Citizenship and Immigration Services Ombudsman, DHS.

**ACTION:** Notice; 30-day notice of information collections under review: DHS Form 7001, OMB Control Number 1601–0004.

**SUMMARY:** The Department of Homeland Security, Office of the Citizenship and Immigration Services Ombudsman, submits this extension for the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The Office of the Citizenship and Immigration Services Ombudsman is soliciting comments concerning an extension to an existing information collection, DHS CIS Ombudsman Case Problem Submission, DHS Form 7001. The information collection was previously published in the **Federal Register** on September 26, 2007, at 72 FR 54669, allowing for OMB review and a 60-day public comment period. Comments received by DHS are being reviewed as applicable. The purpose of this notice is to allow an additional 30 days for public comments.

**DATES:** Comments are encouraged and will be accepted until December 26, 2007. This process is conducted in accordance with 5 CFR 1320.10.

*Comments:* Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security, Office of the Citizenship and Immigration Services Ombudsman, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

The Office of Management and Budget is particularly interested in comments which:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Homeland Security, Office of the CIS Ombudsman, Director of Communications, Mail Stop 1225, Washington, DC 20528–1225; telephone (202) 357–8100 (this is not a toll free number).

**SUPPLEMENTARY INFORMATION:**

#### Analysis

*Agency:* Department of Homeland Security, Office of the Citizenship and Immigration Services Ombudsman.

*Title:* DHS CIS Ombudsman Case Problem Submission.

*OMB No.:* 1601–0004.

*Frequency:* One-time response.

*Affected Public:* Individuals or households. This information collection is necessary for CISOMB to identify problem areas, propose changes, and assist individuals experiencing problems during adjudication of an immigrant benefit with USCIS.

*Estimated Number of Respondents:* 2,600 respondents.

*Estimated Time per Respondent:* 1 hour per response.

*Total Burden Hours:* 2,600.

*Total Burden Cost:* (capital/startup): None.

*Total Burden Cost:* (operating/maintaining): None.

*Description:* The Department of Homeland Security, Office of the Deputy Secretary, Office of the Citizenship and Immigration Services Ombudsman (CISOMB), collects information to receive and process

correspondence received from individuals, employers, and their designated representatives to: (1) Assist individuals and employers in resolving problems during interactions with U.S. Citizenship and Immigration Services (USCIS); (2) identify areas in which individuals and employers have problems in dealing with USCIS; and (3) and to the extent possible, propose changes to mitigate problems as mandated by the Homeland Security Act of 2002, Section 452.

**Scott Charbo,**

*Chief Information Officer.*

[FR Doc. E7–22856 Filed 11–21–07; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[CIS No. 2419–07; DHS Docket No.: USCIS–2007–0044]**

**RIN 1615–ZA57**

### Introduction of the Amended Form I–9 and the New Handbook for Employers

**AGENCY:** U.S. Citizenship and Immigration Services, DHS.

**ACTION:** Notice.

**SUMMARY:** U.S. Citizenship and Immigration Services is issuing this Notice to introduce the newly amended Form I–9, ''Employment Eligibility Verification.'' Employers are required to use the Form I–9 to verify the identity and employment authorization of newly hired employees. The amended Form I–9 contains an updated list of acceptable identity and employment authorization documents that reflect the current regulations. As of November 7, 2007, the amended Form I–9 is the only valid version of the form. The Department of Homeland Security will not seek penalties against an employer for using a previous version of the Form I–9 on or before December 26, 2007.

**DATES:** This Notice is effective November 26, 2007.

**FOR FURTHER INFORMATION CONTACT:** Gregory Francis, Department of Homeland Security, U.S. Citizenship and Immigration Services, Verification Division, 470–490 L'Enfant Plaza East, SW., Suite 8206, Washington, DC 20024; E-mail: *employer.pilots@dhs.gov*; Telephone: 1–888–464–4218.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, 110 Stat. 3009 (Sept. 30, 1996), amended the Immigration and Nationality Act (INA) to reduce the number of documents that an employer may accept from newly hired employees when verifying their identity and employment eligibility (i.e., authorization) as required by law. IIRIRA section 412(a) (amending INA sec. 274A(b)(1), 8 U.S.C. 1324a(b)(1)). On September 30, 1997, the Immigration and Naturalization Service (INS) published an interim rule, ''Interim Designation of Acceptable Documents for Employment Verification,'' implementing those amendments. *See* 62 FR 51001. However, INS did not concurrently amend the Form I–9, ''Employment Eligibility Verification,'' that employers must use to conduct the required verification to reflect the changes made by the interim rule. As a result, the Form I–9 (Rev. 05–31–05) contained an outdated list of acceptable documents.

In the **SUPPLEMENTARY INFORMATION** accompanying the 1997 interim rule, the INS stated that it planned to issue a new Form I–9 in the context of a broader final rulemaking. While U.S. Citizenship and Immigration Services (USCIS), which now maintains the Form I–9, still intends to pursue a broader rulemaking, given the long passage of time since the interim rule, allowing an outdated Form I–9 to remain in use has become untenable. Therefore, USCIS has amended the Form I–9 document list to be consistent with the regulations. On November 7, 2007, USCIS posted the amended Form I–9 on its Web site, at *http://www.uscis.gov.* The amended Form I–9 has a revision date of June 5, 2007, which is printed as ''(Rev. 06/05/07)N'' on the lower right corner of the form. As of November 7, 2007, this is the only valid version of the form.

This Notice introduces the newly amended Form I–9 (Rev. 06/05/07)N and instructs employers on its use.

### II. Changes to Form I–9

*A. List A—Revised*

Because the 1997 interim rule was limited to Form I–9 List A documents, the amended Form I–9 reflects changes to the documents listed under List A only. List A documents are those that evidence both an individual's identity and employment eligibility. The amended Form I–9 no longer lists the following as List A documents: (1) The Certificate of United States Citizenship (Form N–560 or N–561); (2) the Certificate of Naturalization (Form N–550 or N–570); (3) the Form I–151, a long out-of-date version of the Alien Registration Receipt Card (''green card''); (4) the Unexpired Reentry Permit (Form I–327); and (5) the Unexpired Refugee Travel Document (Form 1–571).

The amended Form I–9 retains four types of acceptable List A documents: (1) The U.S. Passport (unexpired or expired); (2) the Permanent Resident Card or Alien Registration Receipt Card (Form I–551); (3) an unexpired foreign passport with a temporary I–551 stamp; and (4) an unexpired Employment Authorization Document that contains a photograph (Form I–766, I–688, I–688A, I–688B). All of these acceptable List A documents were carried over from the previous Form I–9, with the exception of the Form I–766, which is a new addition to List A. The amended Form I–9 also modifies one acceptable List A document. The List A document entitled, ''unexpired foreign passport with an attached Form I–94 indicating unexpired employment authorization,'' has been replaced by ''an unexpired foreign passport with an unexpired Arrival-Departure Record, Form I–94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, if that status authorizes the alien to work for the employer.''

USCIS also has amended the order and organization of List A to track the regulations more directly. For example, the various Employment Authorization Documents are listed together as one category, and the unexpired foreign passport with temporary I–551 stamp is a separate entry from the unexpired passport with Form I–94 indicating an employer-specific work-authorized nonimmigrant status.

This updating of List A on the Form I–9 should help streamline the hiring process by providing employers with a better means of conforming their document acceptance practices with the requirements of the law. List A on the newly amended Form I–9 has been the regulatory List A since 1997, and, therefore, employers should not have been accepting documents not included in the regulatory list.

Given the discrepancy between the Form I–9 and the regulations, however, the INS and, subsequently, the Department of Homeland Security (DHS) withheld enforcement of civil money penalties for violations associated with the changes made by the 1997 interim rule as a temporary transitional measure. 62 FR at 51002. With an amended Form I–9 now available that includes the correct List A, that policy is no longer necessary. Therefore, DHS has determined that the non-enforcement policy will cease as of December 26, 2007.

**B. Other Changes**

The amended Form I–9 now instructs employees that providing their Social Security number in Section 1 of the form is voluntary, pursuant to section 7 of the Privacy Act (5 U.S.C. 552a note). However, employees must provide their Social Security number in section 1 of the form if their employer participates in E-Verify (the employment eligibility verification program formerly known as Basic Pilot or EEV), as provided by section 403(a)(1)(A) of IIRIRA. Moreover, for employees who present their Social Security account number card to their employer as evidence that they are authorized to work in the United States, the employer must record the Social Security Account number in section 2 of the Form I–9.

The amended Form I–9 also includes various nonsubstantive changes to the organization and content of the form instructions to be more consistent with standard USCIS branding practices, such as including a clarification that there is no filing fee associated with the Form I–9.

**III. Use of the Amended Form I–9**

As of November 7, 2007, the Form I–9 (Rev. 06/05/07)N is the only version of the form that is valid for use. DHS recognizes that employers should be afforded a period of time to transition to the amended Form I–9. Therefore, DHS will not seek penalties against an employer for using a previous version of the Form I–9 on or before December 26, 2007. After December 26, 2007, employers who fail to use Form I–9 (Rev. 06/05/07)N may be subject to all applicable penalties under section 274A of the INA, 8 U.S.C. 1324a, as enforced by U.S. Immigration and Customs Enforcement (ICE).

Note that employers do not need to complete the amended Form I–9 for current employees for whom there is already a properly completed Form I–9 on file. Indeed, unnecessary verification may violate the INA's anti-discrimination provision, section 274B of the INA, 8 U.S.C. 1324b, which is enforced by the U.S. Department of Justice's Office of Special Counsel for Immigration Related Unfair Employment Practices. However, employers must use Form I–9 (Rev. 06/05/07)N for any reverification of employment authorization conducted on or after December 26, 2007. Reverification is required when the Form I–9 indicates that the employee's work authorization will expire. To reverify, employers must examine acceptable Form I–9 documents evidencing that the employee remains authorized to work. *See* 8 CFR 274a.2(b)(1)(vii).

**IV. Obtaining Forms I–9 (Rev. 06/05/07)N**

Employers may access the amended Form I–9 (Rev. 06/05/07)N online at *http://www.uscis.gov*. In addition, a newly revised ''Handbook for Employers, Instructions for Completing the Form I–9, (M–274)'' is available online at *http://www.uscis.gov*. Because of its length, the revised M–274 will not be reprinted in the **Federal Register**. To order USCIS forms, call our toll-free number at 1–800–870–3676. The public can get USCIS forms and information on immigration laws, regulations and procedures by telephoning our National Customer Service Center at 1–800–375–5283.

A Spanish-language version of the amended Form I–9 is available at *http://www.uscis.gov* for use in Puerto Rico only. The Spanish-language Form I–9 (Rev. 06/05/07)N is valid as of November 7, 2007. This updated Spanish-language version of the Form I–9 supersedes all previous versions. Employers in Puerto Rico who continue to use previous editions of the Form I–9 in English or Spanish after December 26, 2007 may be subject to fines and penalties.

Dated: November 16, 2007.

**Emilio T. Gonzalez,**

*Director, U.S. Citizenship and Immigration Services.*

**Note:** The Form I–9 is provided as an attachment to this notice.

**BILLING CODE 4410–10–P**

OMB No. 1615-0047; Expires 06/30/08

**Department of Homeland Security**
U.S. Citizenship and Immigration Services

# Form I-9, Employment Eligibility Verification

## Instructions

**Please read all instructions carefully before completing this form.**

**Anti-Discrimination Notice.** It is illegal to discriminate against any individual (other than an alien not authorized to work in the U.S.) in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or citizenship status. It is illegal to discriminate against work eligible individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents presented have a future expiration date may also constitute illegal discrimination.

## What Is the Purpose of This Form?

The purpose of this form is to document that each new employee (both citizen and non-citizen) hired after November 6, 1986 is authorized to work in the United States.

## When Should the Form I-9 Be Used?

All employees, citizens and noncitizens, hired after November 6, 1986 and working in the United States must complete a Form I-9.

## Filling Out the Form I-9

**Section 1, Employee:** This part of the form must be completed at the time of hire, which is the actual beginning of employment. Providing the Social Security number is voluntary, except for employees hired by employers participating in the USCIS Electronic Employment Eligibility Verification Program (E-Verify). **The employer is responsible for ensuring that Section 1 is timely and properly completed.**

**Preparer/Translator Certification.** The Preparer/Translator Certification must be completed if **Section 1** is prepared by a person other than the employee. A preparer/translator may be used only when the employee is unable to complete **Section 1** on his/her own. However, the employee must still sign **Section 1** personally.

**Section 2, Employer:** For the purpose of completing this form, the term "employer" means all employers including those recruiters and referrers for a fee who are agricultural associations, agricultural employers or farm labor contractors.

Employers must complete **Section 2** by examining evidence of identity and employment eligibility within three (3) business days of the date employment begins. If employees are authorized to work, but are unable to present the required document(s) within three business days, they must present a receipt for the application of the document(s) within three business days and the actual document(s) within ninety (90) days. However, if employers hire individuals for a duration of less than three business days, **Section 2** must be completed at the time employment begins. **Employers must record:**

1. Document title;
2. Issuing authority;
3. Document number;
4. Expiration date, if any; and
5. The date employment begins.

Employers must sign and date the certification. Employees must present original documents. Employers may, but are not required to, photocopy the document(s) presented. These photocopies may only be used for the verification process and must be retained with the Form I-9. **However, employers are still responsible for completing and retaining the Form I-9.**

**Section 3, Updating and Reverification:** Employers must complete **Section 3** when updating and/or reverifying the Form I-9. Employers must reverify employment eligibility of their employees on or before the expiration date recorded in **Section 1**. Employers **CANNOT** specify which document(s) they will accept from an employee.

**A.** If an employee's name has changed at the time this form is being updated/reverified, complete Block A.

**B.** If an employee is rehired within three (3) years of the date this form was originally completed and the employee is still eligible to be employed on the same basis as previously indicated on this form (updating), complete Block B and the signature block.

**C.** If an employee is rehired within three (3) years of the date this form was originally completed and the employee's work authorization has expired **or** if a current employee's work authorization is about to expire (reverification), complete Block B and:

1. Examine any document that reflects that the employee is authorized to work in the U.S. (see List A **or** C);
2. Record the document title, document number and expiration date (if any) in Block C, and
3. Complete the signature block.

## What Is the Filing Fee?

There is no associated filing fee for completing the Form I-9. This form is not filed with USCIS or any government agency. The Form I-9 must be retained by the employer and made available for inspection by U.S. Government officials as specified in the Privacy Act Notice below.

## USCIS Forms and Information

To order USCIS forms, call our toll-free number at **1-800-870-3676**. Individuals can also get USCIS forms and information on immigration laws, regulations and procedures by telephoning our National Customer Service Center at **1-800-375-5283** or visiting our internet website at **www.uscis.gov**.

## Photocopying and Retaining the Form I-9

A blank Form I-9 may be reproduced, provided both sides are copied. The Instructions must be available to all employees completing this form. Employers must retain completed Forms I-9 for three (3) years after the date of hire or one (1) year after the date employment ends, whichever is later.

The Form I-9 may be signed and retained electronically, as authorized in Department of Homeland Security regulations at 8 CFR § 274a.2.

## Privacy Act Notice

The authority for collecting this information is the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 USC 1324a).

This information is for employers to verify the eligibility of individuals for employment to preclude the unlawful hiring, or recruiting or referring for a fee, of aliens who are not authorized to work in the United States.

This information will be used by employers as a record of their basis for determining eligibility of an employee to work in the United States. The form will be kept by the employer and made available for inspection by officials of U.S. Immigration and Customs Enforcement, Department of Labor and Office of Special Counsel for Immigration Related Unfair Employment Practices.

Submission of the information required in this form is voluntary. However, an individual may not begin employment unless this form is completed, since employers are subject to civil or criminal penalties if they do not comply with the Immigration Reform and Control Act of 1986.

## Paperwork Reduction Act

We try to create forms and instructions that are accurate, can be easily understood and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: **1)** learning about this form, and completing the form, 9 minutes; **2)** assembling and filing (recordkeeping) the form, 3 minutes, for an average of 12 minutes per response. If you have comments regarding the accuracy of this burden estimate, or suggestions for making this form simpler, you can write to: U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, N.W., 3rd Floor, Suite 3008, Washington, DC 20529. OMB No. 1615-0047.

OMB No. 1615-0047; Expires 06/30/08

**Department of Homeland Security**
U.S. Citizenship and Immigration Services

# Form I-9, Employment Eligibility Verification

**Please read instructions carefully before completing this form. The instructions must be available during completion of this form.**

**ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work eligible individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.**

**Section 1. Employee Information and Verification.** To be completed and signed by employee at the time employment begins.

| Print Name: Last | First | Middle Initial | Maiden Name |
|---|---|---|---|
| | | | |
| Address *(Street Name and Number)* | | Apt. # | Date of Birth *(month/day/year)* |
| | | | |
| City | State | Zip Code | Social Security # |
| | | | |

**I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.**

I attest, under penalty of perjury, that I am (check one of the following):

- ☐ A citizen or national of the United States
- ☐ A lawful permanent resident (Alien #) A _____
- ☐ An alien authorized to work until _____
  (Alien # or Admission #) _____

| Employee's Signature | Date *(month/day/year)* |
|---|---|
| | |

**Preparer and/or Translator Certification.** *(To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.*

| Preparer's/Translator's Signature | Print Name |
|---|---|
| | |
| Address *(Street Name and Number, City, State, Zip Code)* | Date *(month/day/year)* |
| | |

**Section 2. Employer Review and Verification.** To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s).

| **List A** | **OR** | **List B** | **AND** | **List C** |
|---|---|---|---|---|
| Document title: | | | | |
| Issuing authority: | | | | |
| Document #: | | | | |
| Expiration Date *(if any)*: | | | | |
| Document #: | | | | |
| Expiration Date *(if any)*: | | | | |

**CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on** *(month/day/year)* _____ **and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)**

| Signature of Employer or Authorized Representative | Print Name | Title |
|---|---|---|
| | | |
| Business or Organization Name and Address *(Street Name and Number, City, State, Zip Code)* | | Date *(month/day/year)* |
| | | |

**Section 3. Updating and Reverification.** To be completed and signed by employer.

| A. New Name *(if applicable)* | B. Date of Rehire *(month/day/year) (if applicable)* |
|---|---|
| | |

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility.

Document Title: _____ Document #: _____ Expiration Date (if any): _____

**I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.**

| Signature of Employer or Authorized Representative | Date *(month/day/year)* |
|---|---|
| | |

## LISTS OF ACCEPTABLE DOCUMENTS

| LIST A<br>Documents that Establish Both Identity and Employment Eligibility | OR | LIST B<br>Documents that Establish Identity | AND | LIST C<br>Documents that Establish Employment Eligibility |
|---|---|---|---|---|
| 1. U.S. Passport (unexpired or expired) | | 1. Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address | | 1. U.S. Social Security card issued by the Social Security Administration *(other than a card stating it is not valid for employment)* |
| 2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551) | | 2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address | | 2. Certification of Birth Abroad issued by the Department of State *(Form FS-545 or Form DS-1350)* |
| 3. An unexpired foreign passport with a temporary I-551 stamp | | 3. School ID card with a photograph | | 3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal |
| 4. An unexpired Employment Authorization Document that contains a photograph (Form I-766, I-688, I-688A, I-688B) | | 4. Voter's registration card | | 4. Native American tribal document |
| | | 5. U.S. Military card or draft record | | 5. U.S. Citizen ID Card *(Form I-197)* |
| 5. An unexpired foreign passport with an unexpired Arrival-Departure Record, Form I-94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, if that status authorizes the alien to work for the employer | | 6. Military dependent's ID card | | 6. ID Card for use of Resident Citizen in the United States *(Form I-179)* |
| | | 7. U.S. Coast Guard Merchant Mariner Card | | |
| | | 8. Native American tribal document | | 7. Unexpired employment authorization document issued by DHS *(other than those listed under List A)* |
| | | 9. Driver's license issued by a Canadian government authority | | |
| | | **For persons under age 18 who are unable to present a document listed above:** | | |
| | | 10. School record or report card | | |
| | | 11. Clinic, doctor or hospital record | | |
| | | 12. Day-care or nursery school record | | |

**Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)**

[FR Doc. 07–5790 Filed 11–20–07; 12:29 pm]
**BILLING CODE 4410–10–C**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Habitat Conservation Plan for Chevron's North American Exploration and Production Unit in the Lokern Area of the Southern San Joaquin Valley, Kern County, CA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement (EIS) and notice of public meetings.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA), we, the Fish and Wildlife Service (Service), advise the public that we intend to gather information necessary to prepare, in coordination with the California Department of Fish and Game (DFG), and Kern County, a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) on the Chevron Lokern Habitat Conservation Plan (HCP). The HCP is being prepared under Section 10(a)(1)(B) of the Federal Endangered Species Act of 1973, as amended, (Act). Chevron intends to apply for a 50-year incidental take permit from the Service. The permit is needed to authorize the incidental take of threatened and endangered species that could result from oil and gas development and operation activities covered under the HCP.

*We provide this notice to*: (1) Describe the proposed action and possible alternatives; (2) advise other Federal and State agencies, affected Tribes, and the public of our intent to prepare an EIS/EIR; (3) announce the initiation of a public scoping period; and (4) obtain suggestions and information on the scope of issues and alternatives to be included in the EIS/EIR.

**DATES:** Submit written comments on or before December 26, 2007. One public meeting will be held on: Thursday, November 29, 2007, from 4 p.m. to 6 p.m.

**ADDRESSES:** The public meeting will be held at Kern County Public Services Building, Room 1A, 2700 M Street, Bakersfield, CA 93301. Submit written comments to Lori Rinek, Chief, Conservation Planning and Recovery Division, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825. Comments may also be sent by facsimile to 916–414–6713.

**FOR FURTHER INFORMATION CONTACT:** Lori Rinek, Chief, Conservation Planning and Recovery Division, Sacramento Fish and Wildlife Office at (916) 414–6600.

**SUPPLEMENTARY INFORMATION:**

#### Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact Lori Rinek at (916) 414–6600 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

#### Background

Section 9 of the Act and Federal regulations prohibit the ''take'' of wildlife species listed as endangered or threatened (16 U.S.C. 1538). The Act defines the term ''take'' as: To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed species, or to attempt to engage in such conduct (16 U.S.C. 1532). Harm includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering [50 CFR 17.3(c)]. Pursuant to section 10(a)(1)(B) of the Act, we may issue permits to authorize ''incidental take'' of listed species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

Take of listed plant species is not prohibited under the Act and cannot be authorized under a section 10 permit. We propose to include plant species on the permit in recognition of the conservation benefits provided for them under a habitat conservation plan. All species included on the permit would receive assurances under the Service's ''No Surprises'' regulations found in 50 CFR 17.22(b)(5) and 17.32(b)(5).

Species proposed for coverage in the HCP are species that are currently listed as federally threatened or endangered or have the potential to become listed during the life of this HCP and have some likelihood to occur within the project area. Should any of these unlisted covered wildlife species become listed under the Act during the term of the permit, take authorization for those species would become effective upon listing. Six plant species and 11 animal species would be covered by the HCP. Species may be added or deleted during the course of the development of the HCP based on further analysis, new information, agency consultation, and public comment. Currently the following listed plant and animal species are included within the plan: Giant kangaroo rat (*Dipodomys ingens*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), blunt-nosed leopard lizard (*Gambelia sila*), San Joaquin kit fox (*Vulpes macrotis mutica*), California jewelflower (*Caulanthus californicus*), Kern mallow (*Eremalche kernensis*), and San Joaquin woolly-threads (*Monolopia congdonii*). Unlisted species proposed as covered species are the following: San Joaquin antelope squirrel (*Ammospermophilus nelsoni*), Western burrowing owl (*Athene cunicularia hypugea*), short-nosed kangaroo rat (*Dipodomys nitratoides brevinasus*), loggerhead shrike (*Lanius ludovicianus*), California horned lizard (*Phrynosoma coronatum frontale*), American badger (*Taxidea taxus*), Le Conte's thrasher (*Toxostoma lecontei*), heartscale (*Atriplex cordulata*), Lost Hills crownscale (*Atriplex vallicola*), and Hoover's woolly-star (*Eriastrum hooveri*).

The HCP area includes both a permit area and credit area. The permit area consists of those lands where Chevron's covered activities would occur. The permit area is subdivided into three subsections including (a) 13,333 acres of Chevron owned lands (Chevron Lokern Lands) in western Kern County; (b) 239,207 acres encompassing and surrounding five active oil and gas fields (Five Fields—Buena Vista, Cymric-McKittrick, Kern River, Lost Hills, Midway Sunset) in central and western Kern County; and (c) 14,441 acres adjacent to the Lokern area (Lokern Contiguous Area) in western Kern County. Chevron proposes to mitigate for impacts to covered species that occur on permit lands within the mitigation bank to be established on Chevron Lokern Lands. Additionally, Chevron proposes to sell unused mitigation credits to other parties for their separately approved projects within the credit area, which encompasses approximately 3,100 square miles in central and western Kern County, as well as a small portion of southwestern Kings County.

The HCP would result in take authorization for otherwise lawful actions, such as public and private development that may incidentally take or harm animal species or their habitats within the HCP area, and the formation and management of a conservation program for covered species. Activities that may be covered under the HCP within the permit area include: Oil and

gas exploration and development; emergency response; livestock grazing; recreational and educational activities; and scientific research. In addition, all existing activities on developed lands would be authorized as permitted activities within the HCP permit area. However, the aforementioned permitted activities would not be authorized within the credit area. Under the HCP, the effects on covered species from the permitted activities are expected to be minimized and mitigated through participation in a conservation program. This conservation program would focus on providing long-term protection of covered species by protecting biological communities in the HCP area.

Components of this conservation program are now under consideration by the Service and Kern County. These components would likely include: Avoidance and minimization measures, monitoring, adaptive management, and mitigation measures consisting of preservation, restoration, and enhancement of habitat.

**Environmental Impact Statement/ Report**

The EIR/EIS will consider the proposed action (i.e., the issuance of a section 10a(1)(B) permit under the Act), no action (no project/no section 10 permit), and a reasonable range of alternatives. A detailed description of the proposed action and alternatives will be included in the EIR/EIS. The alternatives to be considered for analysis in the EIR/EIS may include: Modified lists of covered species, land coverage areas, and intensity of development. The EIR/EIS will also identify potentially significant impacts on biological resources, land use, air quality, water quality, water resources, economics, and other environmental resource issues that could occur directly or indirectly with implementation of the proposed action and alternatives. Different strategies for avoiding, minimizing, and mitigating the impacts of incidental take may also be considered.

Environmental review of the EIR/EIS will be conducted in accordance with the requirements of NEPA (42 U.S.C. 4321, *et seq.*), its implementing regulations (40 CFR parts 1500–1508), other applicable regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with 40 CFR Section 1501.7 and 1508.22 to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIR/EIS. The primary purpose of the scoping process is to identify important issues raised by the public related to the proposed action. Written comments from interested parties are invited to ensure that the full range of issues related to the permit application is identified. Comments will only be accepted in written form. You may submit written comments by mail, facsimile transmission, or in person (see **ADDRESSES**). All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

Our practice is to make comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Dated: November 19, 2007.

**Ken McDermond,**

*Deputy Manager, California/Nevada Operations Office, Sacramento, California.*

[FR Doc. E7–22934 Filed 11–23–07; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Liquor Ordinance of the Karuk Tribe of California

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the Liquor Ordinance of the Karuk Tribe of California. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Karuk tribal lands. The land is located on trust land and this ordinance allows for the possession and sale of alcoholic beverages within the Karuk Tribe of California tribal lands. This ordinance 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 funds for the continued operation and strengthening of the Karuk tribal government and the delivery of tribal government services.

**DATES:** *Effective Date:* This Act is effective as of November 26, 2007.

**FOR FURTHER INFORMATION CONTACT:** Fred Doka, Tribal Government Services Officer, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, CA 95825; Telephone (916) 978–6067; 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 Karuk Tribal Council adopted this Ordinance pursuant to provisions of the Karuk Constitution on February 14, 2007.

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 the Karuk Tribal Council duly adopted this Ordinance on February 14, 2007.

Dated: November 16, 2007.

**Carl J. Artman,**

*Assistant Secretary—Indian Affairs.*

The Liquor Ordinance of the Karuk Tribe of California reads as follows:

**LIQUOR ORDINANCE**

**Of the Karuk Tribe of California**

**(a) LEGISLATIVE FINDINGS, AUTHORITY AND PURPOSE:**

The Tribal Council of the Karuk Tribe of California hereby finds as follows:

(1) The importation, distribution, manufacture and sale of alcoholic liquor for commercial purposes on Karuk Tribal lands is a matter of special concern to the Tribe.

(2) Federal law as embodied in 18 U.S.C. 1161 provides that certain sections of the United States Code, commonly referred to as Federal Indian Liquor Laws, shall not apply to any act or transaction within any area of Indian country, provided such act or transaction is in conformity with both the laws of the state in which such act

or transaction occurs, and with an act duly adopted by the Tribe having jurisdiction over such areas of Indian country. The authority for the Ordinance and its adoption by Tribal Council is found in the Tribal Constitution under Article V.

(3) This Ordinance is for the purpose of regulating the sale, possession and use of alcoholic liquor on Karuk Tribe of California Tribal lands and other lands subject to Tribal jurisdiction.

**(b) DEFINITIONS:**

To the extent that definitions are consistent with tribal or federal law, terms used herein shall have the same meaning.

**(1) ''Alcoholic liquor''** shall mean any alcoholic beverage containing more than one-half of one percent alcohol by volume, and every liquid or solid, patented or not, containing alcohol and capable of being consumed by a human being.

**(2) ''Tribal Lands''** shall mean all lands held in trust by the United States for the Karuk Tribe or its members.

**(3)** Whenever the words **''sell''** or **''to sell''** refer to anything forbidden by this Chapter and related to alcoholic liquor, they include:

**(A)** To solicit or receive an order.

**(B)** To keep or expose for sale.

**(C)** To deliver for value or in any way other than purely gratuitously.

**(D)** To peddle.

**(E)** To keep with intent to sell.

**(F)** To traffic in.

**(G)** For any consideration, promise or obtained directly or indirectly under any pretext or by any means or procure or allow to be procured for any other person.

**(4)** The word **''sale''** includes every act of selling as defined in subsection 2 of this section.

**(c) PROHIBITED ACTIVITY:**

**(1)** It shall be unlawful for any person to sell, trade or manufacture any alcoholic liquor on Tribal Lands except as provided for in this Ordinance.

**(2)** It shall be unlawful for any business establishment or person on Tribal Lands to possess, transport or keep with intent to sell, barter or trade to another, any liquor, except for those commercial liquor establishments on Tribal Lands licensed by the Tribe, provided, however, that a person may transport liquor from a licensed establishment consistent with the terms of the license.

**(3)** It shall be unlawful for any person to consume alcoholic liquor on a public highway.

**(4)** It shall be unlawful for any person to publicly consume any alcoholic liquor at any community function, or at or near any place of business, Indian ceremonial grounds, recreational areas, including ballparks, and public camping areas, the Tribal Administration Office and any other area where minors gather for meetings or recreation, except within a tribally licensed establishment where alcohol is sold.

**(5)** It shall be unlawful for any person under the age of 21 years to buy, attempt to buy or to misrepresent their age in attempting to buy, alcoholic liquor. It shall be unlawful for any person under the age of 21 years to transport, possess or consume any alcoholic liquor on Tribal Lands, or to be under the influence of alcohol or to be at an established commercial liquor establishment, except as authorized under Section (e) of this Ordinance. No person shall sell or furnish alcoholic liquor to any minor.

**(6)** Alcoholic liquor may not be given as a prize, premium or consideration for a lottery, contest, game of chance or skill, or competition of any kind.

**(d) PROCEDURE FOR LICENSE:**

**(1)** Any request for a license under this Ordinance must be presented to the Tribal Council at least 30 days prior to the requested effective date. Tribal Council shall set license conditions at least as strict as those required by federal and applicable state law, including at a minimum:

**(A)** Liquor may only be served and handled in a manner no less strict than regulated by the California Department of Alcoholic Beverage Control (''ABC'');

**(B)** The license shall be for a term not to exceed one (1) year;

**(C)** The licensee shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises;

**(D)** The licensed premises shall be subject to patrol by Tribal law enforcement personnel and such other law enforcement officials as may be authorized under federal, California, or Tribal law;

**(E)** The licensed premises shall be open to inspection by duly authorized Tribal officials at all times during the regular business hours;

**(F)** No Liquor or intoxicating beverages shall be sold, served, disposed of, delivered, or given to any person, or consumed on the licensed premises except in conformity with the hours and days prescribed by the laws of the State of California, and in accordance with the hours fixed by the Tribal Council, provided that the licensed premises shall not operate or open earlier, or operate or close later, than is permitted by the laws of the State of California;

**(G)** No liquor shall be sold within 200 feet of a polling place on Tribal election days, or when a referendum is held of the people of the Tribe, and including special days of observation as designated by the Tribal Council;

**(H)** All acts and transactions under authority of the Tribal liquor license shall be in conformity with the laws of the State of California, with this Liquor Ordinance, and with any Tribal liquor license issued pursuant to this Liquor Ordinance;

**(I)** There shall be no discrimination in the operations under the Tribal license by reason of race, color, or creed;

**(J)** Sales Taxes shall be imposed and collected on alcoholic beverages in a manner not inconsistent with relevant State and Tribal laws;

**(K)** Liquor may only be served by staff of the licensee; and

**(L)** Liquor may only be served in rooms where gambling is not taking place.

**(2)** Council action on a license request must be taken at a regular or special meeting. Unless the request is for a special event license, the Council shall give at least 14 days' notice of the meeting at which the request will be considered. Notice shall be posted at the Tribal Council offices and at the establishment requesting the license, and will be sent by Certified Mail to the California Department of Alcoholic Beverage Control.

**(e) SALE OR SERVICE OF LIQUOR BY LICENSEE'S MINOR EMPLOYEES:**

**(1)** The holder of a license issued under this Ordinance may employ persons 18, 19 and 20 years of age who may take orders for, serve and sell alcoholic liquor in any part of the licensed premises when that activity is incidental to the serving of food except in those areas classified by the ABC as being prohibited to the use of minors. However, no person who is 18, 19 or 20 years of age shall be permitted to mix, pour or draw alcoholic liquor except when pouring is done as a service to the patron at the patron's table or drawing is done in a portion of the premises not prohibited to minors.

**(2)** Except as stated in this section, it shall be unlawful to hire any person to work in connection with the sale and service of alcoholic beverages in a tribally licensed liquor establishment if such person is under the age of 21 years.

**(f) WARNING SIGNS REQUIRED:**

**(1)** Any person in possession of a valid retail liquor license, who sells liquor by the drink for consumption on the premises or sells for consumption off the premises, shall post a sign informing the public of the effects and risks of alcohol consumption during pregnancy.

**(2)** The sign shall:

**(A)** Contain the message: ''Pregnancy and alcohol do not mix. Drinking alcoholic beverages, including wine coolers and beer, during pregnancy can cause birth defects.''

**(B)** Be either:

**(i)** A large sign, no smaller than eight and one-half inches by 11 inches in size with lettering no smaller than five-eighths of an inch in height; or

**(ii)** A reduced sign, five by seven inches in size with lettering of the same proportion as the large sign described in paragraph (a) of this subsection.

**(C)** Contain a graphic depiction of the message to assist nonreaders in understanding the message. The depiction of a pregnant female shall be universal and shall not reflect a specific race or culture.

**(D)** Be in English unless a significant number of the patrons of the retail premises use a language other than English as a primary language. In such cases, the sign shall be worded both in English and the primary language or languages of the patrons.

**(E)** Be displayed on the premises of all licensed retail liquor premises as either a large sign at the point of entry, or a reduced sized sign at points of sale.

**(3)** The person described in subsection (1) of this section shall also post signs of any size at places where alcoholic beverages are displayed.

**(g) CIVIL PENALTY:**

**(1)** Any person who violates the provisions of this Ordinance is deemed to have consented to the jurisdiction of the Tribal Court and may be subject to a civil penalty in Tribal Court for a civil infraction. Such civil penalty shall not exceed the sum of $1,000 for each such infraction, provided, however, that the penalty shall not exceed $5,000 if it involves minors.

**(2)** The procedures governing the adjudication in Tribal Court of such civil infractions shall be those set out in the Tribal Court Ordinance.

**(3)** The Tribal Council hereby specifically finds that such civil penalties are reasonably necessary and are related to the expense of governmental administration necessary in maintaining law and order and public safety on Tribal Lands and in managing, protecting and developing the natural resources in the aboriginal territory. It is the legislative intent of the Tribal Council that all violations of this Chapter, whether committed by Tribal members, non-member Indians, or non-Indians, be considered civil in nature rather than criminal.

**(h) LICENSE NOT A PROPERTY RIGHT:**

Notwithstanding any other provision of this Liquor Ordinance, a Tribal liquor license is a mere permit for a fixed duration of time. A Tribal liquor license shall not be deemed a property right or vested right of any kind, nor shall the granting of a Tribal liquor license give rise to a presumption of legal entitlement to a license/permit in a subsequent time period.

**(i) ASSIGNMENT OR TRANSFER:**

No Tribal license issued under this Liquor Ordinance shall be assigned or transferred without the prior written approval of the Tribal Council expressed by formal resolution.

**(j) SEVERABILITY:**

If a court of competent jurisdiction finds any provision of this Ordinance to be invalid or illegal under applicable Federal or Tribal law, such provision shall be severed from this Ordinance and the remainder of this Ordinance shall remain in full force and effect.

**(k) CONSISTENCY WITH STATE LAW:**

The Karuk Tribe of California agrees to perform in the same manner as any other California business entity for the purpose of liquor licensing and regulations, including but not limited to licensing, compliance with the regulations of the ABC, maintenance of liquor liability insurance. This provision is not intended to waive KTOC's sovereign immunity status or submit KTOC to any jurisdiction inconsistent with such status.

**(l) EFFECTIVE DATE:**

This Ordinance shall be effective upon publication in the Federal Register after approval by the Secretary of the Interior or his designee.

**(m) CERTIFICATION:**

I, the Chairman, hereby certify the foregoing Ordinance which was approved at a meeting on the 14th day of February, 2007, was duly adopted by a vote of *5* AYES, *0* NOES, *0* ABSTAIN, and said Ordinance has not been rescinded or amended in any way. The Tribal Council is comprised of *9* members of which *5* voted.

*/s/Arch Super*

Arch Super, Chairman

*/s/ Florrine Super, Secretary*

Florrine Super, Secretary

[FR Doc. E7–22929 Filed 11–23–07; 8:45 am]

**BILLING CODE 4310–4J–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[(NM–920–1310–08); (NMNM 98795)]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease NMNM 98795

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of reinstatement of terminated oil and gas lease.

**SUMMARY:** Under the Class II provisions of title IV, Public Law 97–451, the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease NMNM 98795 from the lessee, Nadel and Gussman Permain, LLC, for lands in Eddy County, New Mexico. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Lourdes B. Ortiz, BLM, New Mexico State Office, at (505) 438–7586.

**SUPPLEMENTARY INFORMATION:** No valid lease has been issued that affect the lands. The lessee agrees to new lease terms for rentals and royalties of $10.00 per acre of fraction thereof, per year, and 16⅔ percent, respectively. The lessee paid the required $500.00 administrative fee for the reinstatement of the lease and $166.00 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate lease NMNM 98795, effective the date of termination, June 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

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

Dated: November 19, 2007.

**Lourdes B. Ortiz,**

*Land Law Examiner.*

[FR Doc. 07–5824 Filed 11–23–07; 8:45 am]

**BILLING CODE 4310–FB–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[(NM–920–1310–08); (NMNM 97871)]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease NMNM 97871

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Reinstatement of Terminated Oil and Gas Lease.

**SUMMARY:** Under the Class II provisions of Title IV, Public Law 97–451, the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease NMNM 97871 from the lessee, Energen Resources Corp, for lands in Eddy County, New Mexico. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Lourdes B. Ortiz, BLM, New Mexico State Office, at (505) 438–7586.

**SUPPLEMENTARY INFORMATION:** No valid lease has been issued that affect the lands. The lessee agrees to new lease terms for rentals and royalties of $10.00 per acre or fraction thereof, per year, and 16⅔ percent, respectively. The lessee paid the required $500.00 administrative fee for the reinstatement of the lease and $166.00 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate lease NMNM 97871, effective the date of termination, December 1, 2006, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

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

Dated: November 19, 2007.

**Lourdes B. Ortiz,**

*Land Law Examiner.*

[FR Doc. 07–5825 Filed 11–23–07; 8:45 am]

**BILLING CODE 4310–FB–M**

## DEPARTMENT OF JUSTICE

### National Security Division

**[OMB Number 1124–0006]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day Notice of Information Collection Under Review: Exhibit A to Registration Statement (Foreign Agents).

The Department of Justice (DOJ), National Security Division (NSD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 72, Number 180, pages 53263–53264 on September 18, 2007, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 26, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Exhibit A to Registration Statement (Foreign Agents).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: NSD–3. National Security Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit, not-for-profit institutions, and individuals or households. The form is used to register foreign agents as required under the provisions of the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611, *et seq.,* must set forth the information required to be disclosed concerning each foreign principal, and must be utilized within 10 days of date contract is made or when initial activity occurs, whichever is first.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average response:* The estimated total number of respondents is 164 who will complete a response within .49 hours (29 minutes).

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this information collection is 80 hours annually.

*If additional information is required contact:* Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: November 15, 2007.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E7–22918 Filed 11–23–07; 8:45 am]

**BILLING CODE 4410–PF–P**

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

**[OMB Number 1110–0035]**

### Criminal Justice Information Services Division; National Instant Criminal Background Check System Section; Agency Information Collection Activities: Existing Collection, Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review: Approval of an existing collection; The National Instant Criminal Background Check System (NICS) State Point of Contact (POC) Final Determination Electronic Submission.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division's NICS Section will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until January 25, 2008. This process is conducted in accordance with Title 5, Code of Federal Regulations (CFR), § 1320.10.

If you have comments (especially on the estimated public burden or associated response time), suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Natalie N. Snider, Management and Program Analyst, Federal Bureau of Investigation, Criminal Justice Information Services Division, National Instant Criminal Background Check System Section, Module A–3, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306, or facsimile at (304) 625–7540.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of the 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 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:

(1) *Type of Information Collection:* Approval of an Existing Collection.

(2) *Title of the Forms:* The National Instant Criminal Background Check System (NICS) State Point of Contact (POC) Final Determination Electronic Submission.

(3) *Agency Form Number, if any, and the applicable component of the department sponsoring the collection:*

*Form Number:* 1110–0035.

*Sponsor:* Criminal Justice Information Services (CJIS) Division of the Federal Bureau of Investigation (FBI), Department of Justice (DOJ).

(4) *Affected Public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* Full State Points of Contact (POC) , Partial-POCs, Alternate Permit State POCs.

*Brief Abstract:* This collection is requested of Full State Points of Contact (POCs), Partial POCs, and Alternate Permit State POCs. Per 28 Code of Federal Regulations, Section 25.6(h), POC States are required to transmit electronic determination messages to the Federal Bureau of Investigation (FBI) Criminal Justice Information Services Division's National Instant Criminal Background Check System (NICS) Section of the status of a firearm background check in those instances in which a transaction is ''open'' (transactions unresolved before the end of the operational day on which the transaction was initiated); ''denied'' transactions; transactions reported to the NICS as open and subsequently changed to proceed; and overturned denials. The State POC must communicate this response to the NICS immediately upon communicating their determination to the Federal Firearms Licensee or in those cases in which a response has not been communicated, no later than the end of the operational day in which the transaction was initiated. For those responses that are not received, the NICS will assume the transaction resulted in a ''proceed.''

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

There are 21 State POCs and ten Alternate Permit State POCs who conduct an average of 4,312,811 transactions per year. It is estimated that 26 percent would be affected by this collection and would require electronic messages sent to the NICS. This translates to 1,121,331 transactions, which would be the total number of annual responses. The other 74 percent would not be reported in this collection. It will require one minute (60 seconds) for each POC State to transmit the information per transaction to the NICS. Thus, it is estimated that collectively all respondents will spend 18,689 hours yearly submitting determinations to the NICS. If the number of transactions were distributed evenly among the POC States, then 603 hours would be the estimated time for each of the 31 states to respond. Record keeping time is part of the routine business process and is not part of this calculation.

(6) *An estimate of the total public burden (in hours) associated with the collection:*

The average yearly hour burden for submitting final determinations combined is: (4,312,811 total checks × 26 percent)/60 seconds = 18,689 hours.

If additional information is required, contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: November 20, 2007.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E7–22945 Filed 11–23–07; 8:45 am]

**BILLING CODE 4410–02–P**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OMB Number 1121–NEW]**

### National Institute of Justice; Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review: New. Survey of Law Enforcement's Forensic Backlogs.

The Department of Justice (DOJ), Office of Justice Programs, National Institute of Justice, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork

Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 25, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact John Paul Jones, (202) 307–5715, National Institute of Justice, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New.

(2) *Title of the Form/Collection:* Survey of Law Enforcement's Forensic Backlogs.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* None. National Institute of Justice, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* State and local law enforcement officials.

The National Institute of Justice will use this survey to determine the size and nature of forensic evidence backlogs in state and local law enforcement agencies. For the purposes of this survey, these forensic backlogs are defined as the number of homicide, rape, and property crime cases that contain forensic evidence but that have not been submitted to forensic crime laboratories for analysis. The 2005 Census of Crime Laboratories conducted by the Bureau of Justice Statistics details the size of forensic evidence backlogs in the nation's crime laboratory system. In order to develop a complete picture of forensic backlogs across the criminal justice system, the Survey of Law Enforcement's Forensic Backlogs will provide much needed information on forensic evidence backlogs in state and local law enforcement agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,975 respondents with an average burden time of 30 minutes—1,488 hours total.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 1,488 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 16, 2007.

**Lynn Bryant,**

*Department Clearance Officer, PRA, Department of Justice.*

[FR Doc. E7–22917 Filed 11–23–07; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review: Comment Request

November 19, 2007.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: John Kraemer, OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Occupational Safety and Health Administration.

*Type of Review:* Extension without change of a previously approved collection.

*Title:* Ionizing Radiation (29 CFR 1910.1096).

*OMB Control Number:* 1218–0103.

*Affected Public:* Private Sector: Business or other for-profits.

*Estimated Number of Respondents:* 12,719.

*Estimated Total Annual Burden Hours:* 39,531.

*Estimated Total Annual Costs Burden:* $2,341,440.

*Description:* The purpose of the information collection requirements contained in the Ionizing Radiation Standard (29 CFR 1910.1096) is to document that employers are providing their employees with protection from hazardous ionizing radiation exposure.

*Agency:* Occupational Safety and Health Administration.

*Type of Review:* Extension without change of a previously approved collection.

*Title:* Material Hoists, Personnel Hoists, and Elevators; Posting Requirements (29 CFR 1926.552).

*OMB Control Number:* 1218–0231.

*Affected Public:* Private Sector: Business or other for-profits.

*Estimated Number of Respondents:* 26,547.

*Estimated Total Annual Burden Hours:* 30,282.

*Estimated Total Annual Costs Burden:* $0.

*Description:* The information collection requirements contained in the Standard on Material Hoists, Personnel Hoists, and Elevators (29 CFR 1926.552), are designed to protect employees who operate and work around personnel hoists.

*Agency:* Occupational Safety and Health Administration.

*Type of Review:* Extension without change of a previously approved collection.

*Title:* Regulations Containing Procedures for Handling of Discrimination Complaints.

*OMB Control Number:* 1218–0236.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 390.

*Estimated Total Annual Burden Hours:* 390.

*Estimated Total Annual Costs Burden:* $0.

*Description:* The Department of Labor, through the Occupational Safety and Health Administration (OSHA), is responsible for investigating alleged violations of whistleblower provisions contained in certain Federal laws that prohibit retaliatory action by employers against employees who report unsafe or unlawful practices. These whistleblower protections prohibit an employer from discharging or otherwise retaliating against an employee with respect to compensation, terms, conditions or privileges of employment because the employee engages in any of the activities specified in the particular statute as a protected activity. This information collection covers the whistleblower protection provisions under the following statutes: (1) Safe Water Drinking Act, 42 U.S.C. 300j–9(I); (2) Water Pollution Control Act, 33 U.S.C. 1367; (3) Toxic Substances Control Act, 15 U.S.C. 2622; (4) Solid Waste Disposal Act, 42 U.S.C. 7001; (5) Clean Air Act, 42 U.S.C. 7622; (6) Energy Reorganization Act of 1974, 42 U.S.C. 5851, (7) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610, (8) Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 42121 (AIR 21), (9) Sarbanes-Oxley Act, 18 U.S.C. 1514A, and (10) Pipeline Safety Improvement Act, 49 U.S.C. 60129.

Regulations at 29 CFR part 24, 29 CFR part 1979, 29 CFR part 1980, and 29 CFR part 1981 set forth the procedures for the handling of retaliation complaints under these Federal employee protection statutes. Employees who believe that they have been discriminated against by employers, in violation of whistleblower provisions in certain law, for reporting unlawful practices that adversely affect occupational safety and health, and the environment, are required to place their allegations in writing so they may, where appropriate, be investigated by the Department of Labor.

**Darrin A. King,**

*Acting Departmental Clearance Officer.*

[FR Doc. E7–22896 Filed 11–23–07; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2007–0013]**

### National Advisory Committee on Occupational Safety and Health (NACOSH); Announcement of Meeting

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Announcement of meeting.

**SUMMARY:** The National Advisory Committee on Occupational Safety and Health (NACOSH) will meet December 12, 2007, in Washington, DC.

**DATES:** *NACOSH meeting*: NACOSH will meet from 9 a.m. to 4:30 p.m., Wednesday, December 12, 2007.

*Submission of comments and requests to speak*: Comments and requests to speak at the NACOSH meeting must be received by December 5, 2007.

**ADDRESSES:** *NACOSH meeting*: NACOSH will meet in Room N–3437 A/B/C, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

*Submission of comments and requests to speak*: Comments and requests to speak at the NACOSH meeting, identified by docket number for this **Federal Register** notice (Docket No. OSHA–2007–0013), may be submitted by any of the following methods:

*Electronically*: You may submit materials, including attachments, electronically at: *http://www.regulations.gov*, the Federal eRulemaking Portal. Follow the online instructions for making submissions.

*Facsimile*: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

*Mail, express delivery, hand delivery, messenger or courier service*: Submit three copies of your submissions to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2350 (TTY (877) 889–5627). Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

*Instructions*: All submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2007–0013). Submissions in response to this notice, including personal information provided, will be posted without change at *http:www.regulations.gov*. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birth dates. Because of security-related procedures, submissions by regular mail may result in a significant delay in their receipt. Please contact the OSHA Docket Office, at the address above, for information about security procedures submitting materials by hand delivery, express delivery, and messenger or courier service. For additional information on submitting comments and requests to speak, see the **SUPPLEMENTARY INFORMATION** section below.

*Docket*: To read or download submission, go to *http://www.regulations.gov*. Although listed in the index, some documents (*e.g.*, copyrighted material) are not publicly available to read or download through *http://www.regulations.gov*. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office at the address above.

**FOR FURTHER INFORMATION CONTACT:** *For general information*: Deborah Crawford, OSHA, Directorate of Evaluation and Analysis, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1932; fax (202) 693–1641; e-mail *Crawford.deborah@dol.gov*.

*For special accommodations for the NACOSH meeting*: Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of

Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999; e-mail *Chatmon.Veneta@dol.gov*.

**SUPPLEMENTARY INFORMATION:** NACOSH will meet Wednesday, December 12, 2007, in Washington, DC. All NACOSH meetings are open to the public.

NACOSH is authorized by section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory body and operates in compliance with provisions in the OSH Act, the Federal Advisory Committee Act (5 U.S.C. App. 2), and regulations issued pursuant to those laws (29 CFR part 1912a, 41 CFR parts 101–6 and 102–3).

The tentative agenda for the NACOSH meeting includes:

- Standards and guidance update including diacetyl, beryllium and pandemic flu,
- Presentation on OSHA's Operating Plan,
- Presentation on current activities of the National Institute for Occupational Safety and Health (NIOSH),
- Presentation on the NIOSH National Occupational Research Agenda (NORA), and
- NACOSH work groups.

NACOSH meetings are transcribed and detailed minutes of the meetings are prepared. Meeting transcripts and minutes are included in the official record of NACOSH meetings (Docket No OSHA–20070013).

Interested parties may submit a request to make an oral presentation to NACOSH by one of the methods listed in the **ADDRESSES** section above. The request must state the amount of time requested to speak, the interest represented (e.g., organization name), if any, and a brief outline of the presentation. Requests to address NACOSH may be granted as time permits and at the discretion of the NACOSH chair.

Interested parties also may submit comments, including data and other information using any of the methods listed in the **ADDRESSES** section above. OSHA will provide all submissions to NACOSH members.

Individuals who need special accommodation to attend the NACOSH meeting should contact Veneta Chatmon, at the address above, at least seven days before the meeting.

**Public Participation—Submisions and Access to Official Meeting Record**

You may submit comments and requests to speak (1) electronically, (2) by facsimile, or (3) by hard copy. All submissions, including attachments and other materials, must identify the Agency name and the docket number for this notice (Docket No. OSHA–2007–0013). You may supplement electronic submissions by uploading documents electronically. If, instead, you wish to submit hard copies of supplementary documents, you must submit three copies to the OSHA Docket Office using the instructions in the **ADDRESSES** section above. The additional materials must clearly identify your electronic submission by name, date and docket number.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of submissions. For information about security procedures concerning submissions by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Meeting transcripts and minutes as well as submissions in response to this **Federal Register** notice are included in the official record of the NACOSH meeting (Docket No. OSHA–2007–0013). Submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birth dates. Although all submissions are listed in the *http://www.regulations.gov* index, some documents (*e.g.*, copyrighted materials) are not publicly available to read or download through *http://www.regulations.gov*. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the *http://www.regulations.gov* Web site to make submissions and to access the docket and exhibits is available at the Web site's User Tips link. Contact the OSHA Docket Office for information about materials not available through the Web site and for assistance in using the Internet to locate submissions and other documents in the docket. Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov*. This notice, as well as news releases and other relevant information, is also available on OSHA Webpage at *http://www.osha.gov*.

**Authority and Signature**

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), 29 CFR 1912a, the Federal Advisory Committee Act (5 U.S.C. App. 2), and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, this 20th day of November, 2007.

**Edwin G. Foulke, Jr.,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. E7–22914 Filed 11–23–07; 8:45 am]

**BILLING CODE 4510–26–P**

## NATIONAL COUNCIL ON DISABILITY

### Sunshine Act Meetings

**TYPE:** Quarterly Meeting.

**DATES AND TIMES:**

November 29, 2007, 8:30 a.m.–5 p.m.

November 30, 2007, 8:30 a.m.–3:45 p.m.

December 1, 2007, 8:15 a.m.–11:15 a.m.

**LOCATION:** Hyatt Regency Boston, One Avenue de LaFayette, Boston, Massachusetts.

**STATUS:**

November 29, 2007, 8:30 a.m.–5 p.m.—Open.

November 30, 2007, 8:30 a.m.–3:45 p.m.—Open.

December 1, 2007, 8:15 a.m.–11:15 a.m.—Open.

December 1, 2007, 11:15 a.m.–12 noon—Closed Executive Session.

**AGENDA:** Public Comment Sessions; Emergency Preparedness Panel Discussion; Accessibility and Universal Design Panel Discussion; Youth Transition Presentations; Wounded Warriors Presentation; Reports from the Chairperson, Council Members, and the Executive Director; Strategic Planning; Budget Planning; Unfinished Business; New Business; Announcements; Adjournment.

**SUNSHINE ACT MEETING CONTACT:** Mark S. Quigley, Director of Communications, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax).

**AGENCY MISSION:** NCD is an independent federal agency and is composed of 15 members appointed by the President, by and with the advice and consent of the Senate. NCD provides advice to the President, Congress, and executive branch agencies promoting policies,

programs, practices, and procedures that (A) guarantee equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability; and (B) to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

**ACCOMMODATIONS:** Those needing reasonable accommodations should notify NCD immediately.

**LANGUAGE TRANSLATION:** In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for these meetings should notify NCD immediately.

Dated: November 16, 2007.

**Michael C. Collins,**

*Executive Director.*

[FR Doc. 07–5839 Filed 11–21–07; 11:12 am]

**BILLING CODE 6820–MA–P**

## NATIONAL TRANSPORTATION SAFETY BOARD

### SES Performance Review Board

**AGENCY:** National Transportation Safety Board.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the appointment of members of the National Transportation Safety Board Performance Review Board (PRB).

**FOR FURTHER INFORMATION CONTACT:** Anh Bolles, Chief, Human Resources Division, Office of Administration, National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594–0001, (202) 314–6355.

**SUPPLEMENTARY INFORMATION:** Section 4314(c)(1) through (5) of Title 5, United States Code requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and considers recommendations to the appointing authority regarding the performance of the senior executive.

The following have been designated as members of the Performance Review Board of the National Transportation Safety Board.

The Honorable Robert L. Sumwalt, Vice Chairman, National Transportation Safety Board; PRB Chair.

The Honorable Kathryn Higgins, Member, National Transportation Safety Board.

Steven Goldberg, Chief Financial Officer, National Transportation Safety Board.

Walker Smith, Director, Office of Civil Enforcement, Environmental Protection Agency.

Jack Fox, General Manager, Office of Pipeline Security, Transportation Security Administration, Department of Homeland Security.

Joseph G. Osterman, Managing Director, National Transportation Safety Board.

Dated: November 19, 2007.

**Vicky D'Onofrio,**

*Federal Register Coordinator.*

[FR Doc. 07–5817 Filed 11–23–07; 8:45 am]

**BILLING CODE 7533–01–M**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The U.S. Nuclear Regulatory Commission will convene a teleconference meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on December 12, 2007 to review and vote on an upcoming issue with regards to the medical use of byproduct material. A copy of the agenda for the meeting will be available at *http://www.nrc.gov/reading-rm/doc-collections/acmui/agenda* or by contacting Ms. Ashley M. Tull using the information below.

**DATES:** The teleconference meeting will be held on Wednesday, December 12, 2007, from 12 p.m. to 12:30 p.m. Eastern Standard Time.

*Public Participation:* Any member of the public who wishes to participate in the teleconference discussion should contact Ms. Tull using the contact information below.

*Contact Information:* Ashley M. Tull, e-mail: *amt1@nrc.gov*, telephone: (918) 488–0552 or (301) 415–5294.

**Conduct of the Meeting**

Leon S. Malmud, M.D., will chair the meeting. Dr. Malmud will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Ms. Tull at the contact information listed above. All submittals must be received by December 7, 2007, and must pertain to the topic on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection on NRC's Web site (*http://www.nrc.gov*) and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738, telephone (800) 397–4209, on or about February 12, 2008. Minutes of the meeting will be available on or about January 30, 2008.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, *U.S. Code of Federal Regulations, Part 7*.

Dated: November 19, 2007.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. E7–22948 Filed 11–23–07; 8:45 am]

**BILLING CODE 7590–01–P**

## PENSION BENEFIT GUARANTY CORPORATION

### Proposed Submission of Information Collections for OMB Review; Comment Request; Multiemployer Plan Regulations

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of intention to request extension of OMB approval.

**SUMMARY:** The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of collections of information in PBGC's regulations on multiemployer plans under the Employee Retirement Income Security Act of 1974 (ERISA). This notice informs the public of PBGC's intent and solicits public comment on the collections of information.

**DATES:** Comments must be submitted by January 25, 2008.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *E-mail: paperwork.comments@pbgc.gov.*

- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026. Comments received will be posted to *http:www.pbgc.gov.*

Copies of the collection of information may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting the Disclosure Division or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) PBGC's regulations on multiemployer plans may be accessed on PBGC's Web site at *http://www.pbgc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Donald McCabe, Attorney, or Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

**SUPPLEMENTARY INFORMATION:** An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved and issued control numbers for the collections of information, described below, in PBGC's regulations relating to multiemployer plans (OMB approvals expire March 31, 2008). PBGC intends to request that OMB extend its approval of these collections of information for three years. PBGC is soliciting public comments to—

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information, including the validity of the methodologies and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collections 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.

Comments should identify the specific part number(s) of the regulation(s) they relate to.

The collections of information for which PBGC intends to request extension of OMB approval are as follows:

**1. Termination of Multiemployer Plans (29 CFR Part 4041A) (OMB Control Number 1212–0020)**

Section 4041A(f)(2) of ERISA authorizes PBGC to prescribe reporting requirements for and other ''rules and standards for the administration of'' terminated multiemployer plans. Section 4041A(c) and (f)(1) of ERISA prohibit the payment by a mass-withdrawal-terminated plan of lump sums greater than $1,750 or of nonvested plan benefits unless authorized by PBGC.

The regulation requires the plan sponsor of a terminated plan to submit a notice of termination to PBGC. It also requires the plan sponsor of a mass-withdrawal-terminated plan that is closing out to give notices to participants regarding the election of alternative forms of benefit distribution and, if the plan is not closing out, to obtain PBGC approval to pay lump sums greater than $1,750 or to pay nonvested plan benefits.

PBGC uses the information in a notice of termination to assess the likelihood that PBGC financial assistance will be needed. Plan participants and beneficiaries use the information on alternative forms of benefit to make personal financial decisions. PBGC uses the information in an application for approval to pay lump sums greater than $1,750 or to pay nonvested plan benefits to determine whether such payments should be permitted.

PBGC estimates that plan sponsors each year (1) submit notices of termination for 10 plans, (2) distribute election notices to participants in 5 of those plans, and (3) submit requests to pay benefits or benefit forms not otherwise permitted for 1 of those plans. The estimated annual burden of the collection of information is 19.2 hours and $16,363.

**2. Extension of Special Withdrawal Liability Rules (29 CFR Part 4203) (OMB Control Number 1212–0023)**

Sections 4203(f) and 4208(e)(3) of ERISA allow PBGC to permit a multiemployer plan to adopt special rules for determining whether a withdrawal from the plan has occurred, subject to PBGC approval.

The regulation specifies the information that a plan that adopts special rules must submit to PBGC about the rules, the plan, and the industry in which the plan operates. PBGC uses the information to determine whether the rules are appropriate for the industry in which the plan functions and do not pose a significant risk to the insurance system.

PBGC estimates that at most 1 plan sponsor submits a request each year under this regulation. The estimated annual burden of the collection of information is 1 hour and $5,600.

**3. Variances for Sale of Assets (29 CFR Part 4204) (OMB Control Number 1212–0021)**

If an employer's covered operations or contribution obligation under a plan ceases, the employer must generally pay withdrawal liability to the plan. Section 4204 of ERISA provides an exception, under certain conditions, where the cessation results from a sale of assets. Among other things, the buyer must furnish a bond or escrow, and the sale contract must provide for secondary liability of the seller.

The regulation establishes general variances (rules for avoiding the bond/escrow and sale-contract requirements) and authorizes plans to determine whether the variances apply in particular cases. It also allows buyers and sellers to request individual variances from PBGC. Plans and PBGC use the information to determine whether employers qualify for variances.

PBGC estimates that each year, 11 employers submit, and 11 plans respond to, variance requests under the regulation, and 2 employers submit variance requests to PBGC. The estimated annual burden of the collection of information is 2.75 hours and $6,213.

**4. Reduction or Waiver of Complete Withdrawal Liability (29 CFR Part 4207) (OMB Control Number 1212–0044)**

Section 4207 of ERISA allows PBGC to provide for abatement of an employer's complete withdrawal liability, and for plan adoption of alternative abatement rules, where appropriate.

Under the regulation, an employer applies to a plan for an abatement determination, providing information the plan needs to determine whether withdrawal liability should be abated, and the plan notifies the employer of its determination. The employer may, pending plan action, furnish a bond or escrow instead of making withdrawal liability payments, and must notify the plan if it does so. When the plan then

makes its determination, it must so notify the bonding or escrow agent.

The regulation also permits plans to adopt their own abatement rules and request PBGC approval. PBGC uses the information in such a request to determine whether the amendment should be approved.

PBGC estimates that each year, 100 employers submit, and 100 plans respond to, applications for abatement of complete withdrawal liability, and 1 plan sponsor requests approval of plan abatement rules from PBGC. The estimated annual burden of the collection of information is 25.5 hours and $35,000.

**5. Reduction or Waiver of Partial Withdrawal Liability (29 CFR Part 4208) (OMB Control Number 1212–0039)**

Section 4208 of ERISA provides for abatement, in certain circumstances, of an employer's partial withdrawal liability and authorizes PBGC to issue additional partial withdrawal liability abatement rules.

Under the regulation, an employer applies to a plan for an abatement determination, providing information the plan needs to determine whether withdrawal liability should be abated, and the plan notifies the employer of its determination. The employer may, pending plan action, furnish a bond or escrow instead of making withdrawal liability payments, and must notify the plan if it does so. When the plan then makes its determination, it must so notify the bonding or escrow agent.

The regulation also permits plans to adopt their own abatement rules and request PBGC approval. PBGC uses the information in such a request to determine whether the amendment should be approved.

PBGC estimates that each year, 1,000 employers submit, and 1,000 plans respond to, applications for abatement of partial withdrawal liability and 1 plan sponsor requests approval of plan abatement rules from PBGC. The estimated annual burden of the collection of information is 250.5 hours and $350,000.

**6. Allocating Unfunded Vested Benefits To Withdrawing Employers (29 CFR Part 4211) (OMB Control Number 1212–0035)**

Section 4211(c)(5)(A) of ERISA requires PBGC to prescribe how plans can, with PBGC approval, change the way they allocate unfunded vested benefits to withdrawing employers for purposes of calculating withdrawal liability.

The regulation prescribes the information that must be submitted to PBGC by a plan seeking such approval. PBGC uses the information to determine how the amendment changes the way the plan allocates unfunded vested benefits and how it will affect the risk of loss to plan participants and PBGC.

PBGC estimates that 7 plan sponsors submit approval requests each year under this regulation. The estimated annual burden of the collection of information is 14 hours.

**7. Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR Part 4219) (OMB Control Number 1212–0034)**

Section 4219(c)(1)(D) of ERISA requires that PBGC prescribe regulations for the allocation of a plan's total unfunded vested benefits in the event of a ''mass withdrawal.'' ERISA section 4209(c) deals with an employer's liability for de minimis amounts if the employer withdraws in a ''substantial withdrawal.''

The reporting requirements in the regulation give employers notice of a mass withdrawal or substantial withdrawal and advise them of their rights and liabilities. They also provide notice to PBGC so that it can monitor the plan, and they help PBGC assess the possible impact of a withdrawal event on participants and the multiemployer plan insurance program.

PBGC estimates that there is at most 1 mass withdrawal and 1 substantial withdrawal per year. The plan sponsor of a plan subject to a withdrawal covered by the regulation provides notices of the withdrawal to PBGC and to employers covered by the plan, liability assessments to the employers, and a certification to PBGC that assessments have been made. (For a mass withdrawal, there are 2 assessments and 2 certifications that deal with 2 different types of liability. For a substantial withdrawal, there is 1 assessment and 1 certification (combined with the withdrawal notice to PBGC).) The estimated annual burden of the collection of information is 4 hours and $9,095.

**8. Procedures for PBGC Approval of Plan Amendments (29 CFR Part 4220) (OMB Control Number 1212–0031)**

Under section 4220 of ERISA, a plan may within certain limits adopt special plan rules regarding when a withdrawal from the plan occurs and how the withdrawing employer's withdrawal liability is determined. Any such special rule is effective only if, within 90 days after receiving notice and a copy of the rule, PBGC either approves or fails to disapprove the rule.

The regulation provides rules for requesting PBGC's approval of an amendment. PBGC needs the required information to identify the plan, evaluate the risk of loss, if any, posed by the plan amendment, and determine whether to approve or disapprove the amendment.

PBGC estimates that 3 plan sponsors submit approval requests per year under this regulation. The estimated annual burden of the collection of information is 1.5 hours.

**9. Mergers and Transfers Between Multiemployer Plans (29 CFR Part 4231) (OMB Control Number 1212–0022)**

Section 4231(a) and (b) of ERISA requires plans that are involved in a merger or transfer to give PBGC 120 days' notice of the transaction and provides that if PBGC determines that specified requirements are satisfied, the transaction will be deemed not to be in violation of ERISA section 406(a) or (b)(2) (dealing with prohibited transactions).

This regulation sets forth the procedures for giving notice of a merger or transfer under section 4231 and for requesting a determination that a transaction complies with section 4231.

PBGC uses information submitted by plan sponsors under the regulation to determine whether mergers and transfers conform to the requirements of ERISA section 4231 and the regulation.

PBGC estimates that there are 35 transactions each year for which plan sponsors submit notices and approval requests under this regulation. The estimated annual burden of the collection of information is 8.75 hours and $9,756.

**10. Notice of Insolvency (29 CFR Part 4245) (OMB Control Number 1212–0033)**

If the plan sponsor of a plan in reorganization under ERISA section 4241 determines that the plan may become insolvent, ERISA section 4245(e) requires the plan sponsor to give a ''notice of insolvency'' to PBGC, contributing employers, and plan participants and their unions in accordance with PBGC rules.

For each insolvency year under ERISA section 4245(b)(4), ERISA section 4245(e) also requires the plan sponsor to give a ''notice of insolvency benefit level'' to the same parties.

This regulation establishes the procedure for giving these notices. PBGC uses the information submitted to estimate cash needs for financial

assistance to troubled plans. Employers and unions use the information to decide whether additional plan contributions will be made to avoid the insolvency and consequent benefit suspensions. Plan participants and beneficiaries use the information in personal financial decisions.

PBGC estimates that 1 plan sponsor of an ongoing plan gives notices each year under this regulation. The estimated annual burden of the collection of information is 1 hour and $4,741.

**11. Duties of Plan Sponsor Following Mass Withdrawal (29 CFR Part 4281) (OMB Control Number 1212–0032)**

Section 4281 of ERISA provides rules for plans that have terminated by mass withdrawal. Under section 4281, if nonforfeitable benefits exceed plan assets, the plan sponsor must amend the plan to reduce benefits. If the plan nevertheless becomes insolvent, the plan sponsor must suspend certain benefits that cannot be paid. If available resources are inadequate to pay guaranteed benefits, the plan sponsor must request financial assistance from PBGC.

The regulation requires a plan sponsor to give notices of benefit reduction, notices of insolvency and annual updates, and notices of insolvency benefit level to PBGC and to participants and beneficiaries and, if necessary, to apply to PBGC for financial assistance.

PBGC uses the information it receives to make determinations required by ERISA, to identify and estimate the cash needed for financial assistance to terminated plans, and to verify the appropriateness of financial assistance payments. Plan participants and beneficiaries use the information to make personal financial decisions.

PBGC estimates that plan sponsors of terminated plans each year give benefit reduction notices for 2 plans and give notices of insolvency benefit level and annual updates, and submit requests for financial assistance, for 28 plans. Of those 28 plans, PBGC estimates that plan sponsors each year give notices of insolvency for 4 plans. The estimated annual burden of the collection of information is one hour and $701,574.

Issued in Washington, DC, this 20th day of November, 2007.

**John H. Hanley,**

*Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.*

[FR Doc. E7–22956 Filed 11–23–07; 8:45 am]

**BILLING CODE 7709–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection, Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 203–2 and Form ADV–W; SEC File No. 270–40; OMB Control No. 3235–0313.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is ''Rule 203–2 (17 CFR 275.203–2) and Form ADV–W (17 CFR 279.2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b).'' Rule 203–2 under the Investment Advisers Act of 1940 establishes procedures for an investment adviser to withdraw its registration with the Commission. Rule 203–2 requires every person withdrawing from investment adviser registration with the Commission to file Form ADV–W electronically on the Investment Adviser Registration Depository (''IARD''). The purpose of the information collection is to notify the Commission and the public when an investment adviser withdraws its pending or approved SEC registration. Typically, an investment adviser files a Form ADV–W when it ceases doing business or when it is ineligible to remain registered with the Commission.

The respondents to the collection of information are all investment advisers that are registered with the Commission or have applications pending for registration. The Commission has estimated that compliance with the requirement to complete Form ADV–W imposes a total burden of approximately 0.75 hours (45 minutes) for an adviser filing for full withdrawal and approximately 0.25 hours (15 minutes) for an adviser filing for partial withdrawal. Based on historical filings, the Commission estimates that there are approximately 500 respondents annually filing for full withdrawal and approximately 500 respondents annually filing for partial withdrawal. Based on these estimates, the total estimated annual burden would be 500 hours ((500 respondents × .75 hours) + (500 respondents × .25 hours)).

Rule 203–2 and Form ADV–W do not require recordkeeping or records retention. The collection of information requirements under the rule and form are mandatory. The information collected pursuant to the rule and Form ADV–W are filings with the Commission. These filings are not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the documentation 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: November 13, 2007.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–22927 Filed 11–23–07; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of November 26, 2007:

An Open Meeting will be held on Wednesday, November 28, 2007 at 10 a.m., in Room L–002, the Auditorium, and a Closed Meeting will be held on Thursday, November 29, 2007 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the

Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the Open Meeting scheduled for Wednesday, November 28, 2007 will be:

1. The Commission will consider whether to adopt amendments to Rule 14a–8(i)(8) under the Securities Exchange Act of 1934, to clarify its longstanding interpretation of that rule.

2. The Commission will consider whether to adopt amendments to the proxy rules under the Securities Exchange Act of 1934 to facilitate the use of electronic shareholder forums.

The subject matter of the Closed Meeting scheduled for Thursday, November 29, 2007 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Adjudicatory matters; and

Other matters related to enforcement actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

November 20, 2007.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E7–22999 Filed 11–23–07; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56811; File No. SR–Amex–2007–118]**

## Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Revising the AEMI Rules To Eliminate the Post-Opening Pair-Off of Marketable Orders Held in a Message Queue

November 19, 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 November 13, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by the Amex. The Amex has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(5) thereunder[4] as one that effects a change in an existing order-entry or trading system, 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 Amex proposes to adopt changes to the rules governing the Exchange's new hybrid market trading platform for equity products and exchange-traded funds, designated as AEMISM (''AEMI''), to eliminate the existing post-opening pair-off of marketable orders that are held in a Message Queue[5] during the main pair-off at an opening or reopening.

The proposed rule change is available at the Amex's principal office, the Commission's Public Reference Room, and the Amex's Web site at *http://www.amex.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 Amex 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 Amex 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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Amex recently adopted new Commentary .06 to Rule 126–AEMI, ''Precedence of Bids and Offers,'' which provides that AEMI will function at all times in a manner that assures compliance with the Exchange's priority and parity rules.[6] The Amex adopted Commentary .06 to comply with an undertaking in Section III.F.1 of the settlement order in a recent administrative proceeding.[7] In the September Proposal, the Exchange noted that there were two exceptions to its compliance with the requirements of Commentary .06 that the Exchange had recently become aware of and was working to correct in the near future.[8]

The Exchange has subsequently changed its trading system to eliminate the first exception mentioned above. The purpose of this proposal is to resolve the second exception to Rule 126–AEMI, Commentary .06 mentioned above by amending Amex Rules 108–AEMI, ''Priority and Parity at Openings and Reopenings,'' and 128A–AEMI, ''Automatic Execution,'' to eliminate the existing post-opening pair-off of marketable orders that are briefly held in a Message Queue during the main pair-off at an opening or reopening. System issues associated with this post-opening pair-off, which takes place at the time the Message Queue is terminated, can, under certain circumstances, result in the violation of the Exchange's priority and parity rules.

The Amex is filing this proposal simultaneously with the

[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] *See* Rule 1A–AEMI for a description of a Message Queue.

[6] *See* Securities Exchange Act Release No. 56495 (September 21, 2007), 72 FR 55262 (September 28, 2007) (notice of filing and immediate effectiveness of File No. SR–Amex–2007–105) (''September Proposal'').

[7] *See* In the Matter of American Stock Exchange LLC, Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions, a Censure, and a Cease-and-Desist Order Pursuant to Sections 19(h)(1) and 21C of the Securities Exchange Act of 1934, Securities Exchange Act Release No. 55507 (March 22, 2007) (Administrative Proceeding File No. 3–12594).

[8] *See* September Proposal, *supra* note 6, at note 7.

implementation of the related changes to the AEMI system eliminating the post-opening pair-off. As provided in the proposed rule language, the orders from the Message Queue following the opening pair-off will be treated in the same manner as incoming orders during the regular session, including the generation of intermarket sweep orders as required, and they will enter the AEMI Book in the same time sequence in which they entered the Message Queue.[9]

The Exchange asserts that the proposal to effect the foregoing changes to the AEMI trading system does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and does not have the effect of limiting the access to or availability of the system. The Exchange believes that the proposed rule changes are non-controversial and that the related changes to the AEMI system will benefit investors by eliminating an existing system function that could potentially result in a violation of the Exchange's rules. The Amex believes that the changes also should have the additional benefit of simplifying the Amex's market structure and making its pricing more transparent.

2. Statutory Basis

The proposed rule change is designed to be consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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 proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the Amex has designated the proposed rule change as effecting a change in an existing order-entry or trading system of the Amex that does not: (1) Significantly affect the protection of investors or 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, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule 19b–4(f)(5) thereunder.[13]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

**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 at *http://www.sec.gov/rules/sro.shtml;* or
- Send an e-mail to *rulecomments@sec.gov.* Please include File No. SR–Amex 2007–118 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 No. SR–Amex 2007–118. 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 at *http://www.sec.gov/rules/sro.shtml.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Amex 2007–118 and should be submitted on or before December 17, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–22891 Filed 11–21–07; 8:45 am]

**BILLING CODE 8011–01–P**

[9] The Exchange also proposes to make a conforming change to the definition of ''Message Queue'' in Rule 1A–AEMI to clarify that queued messages that enter the AEMI Book do so in the aforementioned time sequence under the current functioning of the AEMI system.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(5).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56802; File No. SR–Amex–2007–53]**

## Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change, and Amendment Nos. 1 and 2 Thereto, Relating to the Listing and Trading of the GreenHaven Continuous Commodity Index Fund

November 16, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

substantially prepared by the Exchange. On July 31, 2007, Amex filed Amendment No. 1 to the proposed rule change, and on November 16, 2007, Amex filed Amendment No. 2 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes, pursuant to Commentary .07 to Amex Rule 1202, to list and trade shares of the GreenHaven Continuous Commodity Index Fund (the ''Fund''). The text of the proposed rule change is available at the Commission's Public Reference Room, at the Exchange, and at *http://www.amex.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 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

Pursuant to Commentary .07 to Amex Rule 1202, the Exchange may approve for listing and trading trust issued receipts (''TIRs'') investing in shares or securities (the ''Investment Shares'') that hold investments in any combination of securities, futures contracts, options on futures contracts, swaps, forward contracts, commodities or portfolios of investments. Amex proposes to list for trading the shares of the Fund (the ''Shares''), which represent beneficial ownership interests in the Master Fund's net assets, consisting solely of the common units of beneficial interest (''Master Fund Units'') of the GreenHaven Continuous Commodity Index Tracking Master Fund (the ''Master Fund'').

The investment objective of the Fund and the Master Fund is to reflect the performance of the Continuous Commodity Total Return Index (the ''Index'' or ''CCI–TR''),[3] over time, less the expenses of the operations of the Fund and the Master Fund. The Fund will pursue its investment objective by investing substantially all of its assets in the Master Fund. The Master Fund will pursue its investment objective by investing in a portfolio of exchange-traded futures, each a ''Commodity Futures Contract,'' on the commodities comprising the Index (''the Index Commodities''). The Master Fund will also hold cash and United States Treasury securities for deposit with the Master Fund's Commodity Broker as margin and other high credit quality short-term fixed income securities. The Master Fund's portfolio is managed to reflect the performance of the Index over time.

The Master Fund will not be ''actively managed,'' but instead seeks to track the performance of the CCI–TR. To maintain the correspondence between the composition and weightings of the Index Commodities comprising the Index, the Managing Owner may adjust the portfolio on a daily basis to conform to periodic changes in the identity and/or relative weighting of the Index Commodities. The Managing Owner will also make adjustments and changes to the portfolio in the case of significant changes to the Index. The Managing Owner is registered as a commodity pool operator (''CPO'') and commodity trading advisor (''CTA'') with the Commodity Futures Trading Commission (''CFTC'') and is a member of the National Futures Association (''NFA'').

The Exchange submits that Commentary .07 to Amex Rule 1202 accommodates the listing and trading of the Shares.

*a. Introduction*

In January of 2006, the Commission approved Commentary .07 to Rule 1202, which expanded the ability of the Exchange to list and trade TIRs based on a portfolio of underlying investments that may not be ''securities.'' [4] In the instant proposal, the Exchange proposes to list and trade the Shares pursuant to such Rule.

Under Commentary .07(c) to Amex Rule 1202, the Exchange may list and trade TIRs investing in Investment Shares [5] such as the Shares. The Shares will conform to the initial and continued listing criteria under Commentary .07(d) to Amex Rule 1202. The Fund was formed as a separate series of a Delaware statutory trust pursuant to a Certificate of Trust and a Declaration of Trust and Trust Agreement among, CSC Trust Company of Delaware, as trustee, and the Managing Owner and the Limited Owner, as the holders of the Shares.[6]

The Exchange notes that the Commission has permitted the listing and trading on Amex of products linked to the performance of underlying currencies and commodities.[7]

*b. Description of the Index*

The CCI–TR, consisting of 17 commodity futures prices, offers investors a broad benchmark for the

[3] Reuters America LLC (''Reuters'') is the owner, publisher, and custodian of CCI–TR which represents a total return version of the original Commodity Research Bureau (CRB) Index. The Index is widely viewed as a broad measure of overall commodity price trends because of the diverse nature of the Index's constituent commodities. The Index is calculated to produce an unweighted geometric mean of the individual commodity price relatives, *i.e.*, a ratio of the current price to the base year average price. The base year for the CCI–TR is 1982, with a starting value of 100.

[4] *See* Securities Exchange Act Release No. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (SR–Amex–2005–59).

[5] Commentary .07(b)(1) to Amex Rule 1202 defines ''Investment Shares'' as a security (a) that is issued by a trust, partnership, commodity pool or other similar entity that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities, swaps or high credit quality short-term fixed income securities or other securities; and (b) issued and redeemed daily at net asset value in amounts correlating to the number of receipts created and redeemed in a specified aggregate minimum number.

[6] The Trust and the Funds will not be subject to registration and regulation under the Investment Company Act of 1940 (the ''1940 Act'').

[7] *See, e.g.*, Securities Exchange Act Release Nos. 55632 (April 13, 2007), 72 FR 19987 (April 20, 2007) (SR–Amex–2006–112) (approving the listing and trading of the United States Natural Gas Fund, LP); 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR–Amex 2005–127) (approving the listing and trading of the United States Oil Fund, LP); 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR–Amex 2005–72) (approving the listing and trading of the iShares Silver Trust); and 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (SR–Amex 2006–53) (approving the listing and trading of the DB Commodity Index Tracking Fund); 53059 (January 5, 2006), 71 FR 2072 (January 12, 2006) (SR–Amex 2005–128) (approving the listing and trading of the Euro Currency Trust); 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex 2004–38) (approving the listing and trading of the iShares COMEX Gold Trust); and 51446 (March 29, 2005), 70 FR 17272 (April 5, 2005) (SR–2005–32) (approving the listing and trading of streetTRACKS Gold Shares). *See also* Securities Exchange Act Release Nos. 55029 (December 29, 2006), 72 FR 806 (January 8, 2007) (SR–Amex 2006–76) (approving the listing and trading of the DB Multi-Sector Commodity Trust); 54450 (September 14, 2006), 71 FR 55230 (September 21, 2006) (SR–Amex 2006–44) (approving the listing and trading of shares of the DB Currency Index Value Fund); and 55292 (February 14, 2007), 72 FR 8406 (February 26, 2007) (SR–Amex 2006–86) (approving the listing and trading of shares on DB U.S. Dollar Index Bullish Fund and the PowerShares DB U.S. Dollar Index Bearish Fund).

performance of the commodity sector. The 17 commodities are currently: Corn, wheat, soybeans, live cattle, lean hogs, gold, silver, copper, cocoa, coffee, sugar #11, cotton, orange juice, platinum, crude oil, heating oil, and natural gas. The Index is intended to provide a representation of broad trends in overall commodity prices, and was originally calculated to produce a ratio of the current price to the base year average price. The Index takes into account the economics of rolling listed Commodity Futures Contracts forward to avoid delivery and maintain exposure to Commodity Futures Contracts with the liquidity characteristics of being exchange traded. The Index is generally viewed as a broad measure of overall commodity price trends.

As the Commodity Futures Contracts near expiration, they are replaced by contracts that have a later expiration. For example, a contract purchased and held in November 2006 may specify January 2007 expiration. As that contract nears expiration, it may be replaced by selling the January 2007 contract and purchasing the contract expiring in March 2007. This process is referred to as ''rolling.'' Historically, the prices of crude oil and heating oil have frequently been higher for contracts with shorter-term expirations than for contracts with longer-term expirations, which is referred to as ''backwardation.'' In these circumstances, absent other factors, the sale of the January 2007 contract would take place at a price that is higher than the price at which the March 2007 contract is purchased, thereby creating a gain in connection with rolling. While crude oil and heating oil have historically exhibited consistent periods of backwardation, backwardation will likely not exist in these markets at all times.

Conversely, gold, corn, soybeans and wheat historically exhibit ''contango'' markets rather than backwardation, where the prices of contracts are higher in the distant delivery months than in the nearer delivery months due to the costs of long-term storage of a physical commodity prior to delivery or other factors. Although gold, corn, soybeans and wheat have historically exhibited consistent periods of contango, it is not likely this will exist in these markets at all times.

The Index generally averages all futures prices six months forward, up to a maximum of five delivery months per commodity. A minimum of two delivery months, however, must be used to calculate the current price if the second contract is outside the six-month window. Commodity Futures Contracts in the delivery period are excluded from the calculation. Although each of the 17 commodities is equally weighted, the Index uses an average of the prices of the 17 commodities and an average of those commodities across time within each commodity. Each commodity is averaged across time (six-month period) and then these 17 component figures are averaged together. The continuous rebalancing provided by this methodology means the Index constantly decreases exposure to commodity markets gaining in value and increases exposure to those markets declining in value to the diverse nature of its constituent commodities.

The following table reflects the index weights, of each Index commodity:

| Index commodity | Index weight (percent) |
|---|---|
| WTI Crude Oil | 5.88 |
| Heating Oil | 5.88 |
| Natural Gas | 5.88 |
| Corn | 5.88 |
| Wheat | 5.88 |
| Soybeans | 5.88 |
| Live Cattle | 5.88 |
| Lean Hogs | 5.88 |
| Sugar | 5.88 |
| Cotton | 5.88 |
| Coffee | 5.88 |
| Cocoa | 5.88 |
| Orange Juice | 5.88 |
| Gold | 5.88 |
| Silver | 5.88 |
| Platinum | 5.88 |
| Copper | 5.88 |

Calculating Total Return. The calculation of this index is comprised of the daily changes in the CCI spot index, the roll yield that is implied by rolling selected commodity futures contracts forward to the next defined commodity contract on specific dates (Roll Dates), and the 90 day T-Bill yield for a single day. The CCI–TR is calculated using the following three variables:

- The CCI cash index and its daily return; The CCI is a geometric average of the 17 commodities multiplied by a constant factor.

CCI = [Geometric Average (PRICES)/30.7766] $\times$ 0.8486 $\times$ 100.

- The second Friday in January, February, April, June, August, and November are the roll dates for the CCI–TR. On these dates, two sets of prices are considered; one from the expiring month contract and another from the next contract month window. The ratio of the two index values is the roll ratio. Each index value in the subsequent contract month, is multiplied by the value of the ratio. The roll ratio is determined on the roll date and then is multiplied to each of the index values for that contract month. The index treated by multiplying the CCI with the roll ratio is called the CCI—Roll Return Index or CCI Continuous Contract Index. Roll Ratio = Index Value (nearby month)/Index value (deferred Month), on the date.
- The CCI–TR had a starting value of 100 on January 1st 1982. This index is compounded daily by multiplying the previous day value with change in CCI Index on that day and 90 days T-Bill yield for a single day. On Mondays, the T-Bill yield for 3 days is used because of the interest earned by the collateral over the weekend.

CCI–TR = 100 $\times$ (1+ Continuous Daily Return + T-Bill return for one day), beginning January 1, 1982.

Continuous Daily return = [CCI Continuous Contract Index/CCI Continuous Contract Index t-1].

T-Bill return for one day = {[1/(1 $-$ (91/360) $\times$ T-Bill Rate t-1)] $-$ (l/91)} $-$ 1.

*c. Commodity Futures Contracts*

The prices of the Commodity Futures Contracts are volatile with fluctuations expected to affect the value of the Shares. Commodity Futures Contracts to be held by the Master Fund will be traded solely on U.S. futures exchanges. The Commodity Futures Contracts to be entered into by the Master Fund are listed and traded on organized and regulated exchanges based on the various commodities comprising the Index described above.

| Index commodity | Exchange | Time traded |
|---|---|---|
| WTI Crude Oil<br>Heating Oil<br><br><br><br>Natural Gas. | New York Mercantile Exchange ("NYMEX"). | 9 a.m.–2:30 p.m. In addition, NYMEX ACCESS®, an electronic trading system, is open for price discovery on the Benchmark Futures Contract each Monday through Thursday at 3:15 p.m. ET through the following morning at 9:50 a.m. E.T., and on Friday from 3:15 p.m. to 5:15 p.m. and from 7 p.m. Sunday night until Monday morning 9:50 a.m. ET. |

| Index commodity | Exchange | Time traded |
|---|---|---|
| Corn | Chicago Board of Trade (“CBOT”) | 9:30 a.m.–1:15 p.m. Electronic trading is from 6:30 p.m.–6 a.m. and 9:30 a.m.–1:15 p.m. |
| Wheat | CBOT | 9:30 a.m.–1:15 p.m. Electronic trading is from 6:32 p.m.–6 a.m. and 9:30 a.m.–1:15 p.m. |
| Soybeans | CBOT | 9:30 a.m.–1:15 p.m. Electronic trading is from 6:31 p.m.–6 a.m. and 9:30 a.m.–1:15 p.m. |
| Live Cattle | Chicago Mercantile Exchange (“CME”) | 9:05–1 p.m. |
| Lean Hogs | CME | 9:10–1 p.m. |
| Sugar No. 11 | New York Board of Trade (“NYBOT”) | 8:10 a.m. to 12:30 p.m.; pre-open commences at 8 a.m.; closing period commences at 11:58 a.m. Electronic trading has a pre-opening trading session from 8 p.m. of prior day until 1:30 a.m. and then 1:30 a.m. through 3:15 p.m. |
| Cotton | NYBOT | 10:30 a.m. to 2:15 p.m.; pre-open commences at 10:20 a.m.; closing period commences at 2:14 p.m. Electronic trading has a pre-opening trading session from 8 p.m. of prior day until 1:30 a.m. and then 1:30 a.m. through 3:15 p.m. |
| Coffee | NYBOT | 8:30 a.m. to 12:30 p.m.; pre-open commences at 8:20 a.m.; closing period commences at 12:28 p.m. Electronic trading has a pre-opening trading session from 8 p.m. of prior day until 1:30 a.m. and then 1:30 a.m. through 3:15 p.m. |
| Cocoa | NYBOT | 8 a.m.—11:50 a.m. Pre-Open commences at 7:50 a.m.; closing period commences at 11:45 a.m. Electronic trading has a pre-opening trading session from 8 p.m. of prior day until 1:30 a.m. and then 1:30 a.m. through 3:15 p.m. |
| Orange Juice | NYBOT | 10 a.m. to 1:30 p.m.; pre-open commences at 9:50 a.m.; pre-close commences at 1:15 p.m.; closing period commences at 1:29 p.m. Electronic trading has a pre-opening trading session from 6:45 a.m. until 7 a.m. and then 7 a.m. through 3:15 p.m. |
| Gold | NYMEX | 8:20 p.m.–1:30 p.m. |
| Silver | NYMEX | 8:25 a.m.–1:25 p.m. |
| Platinum | NYMEX | 8:20 a.m.–1:05 p.m. |
| Copper | NYMEX | 8:10 a.m.–1 p.m. |

*d. Structure of the Funds*

*Fund and Master Fund.* The Fund and Master Fund are statutory trusts formed pursuant to the Delaware Statutory Trust Act and will issue units of beneficial interest or shares that represent units of fractional undivided beneficial interest in and ownership of the respective Fund, or Master Fund. Unless terminated earlier, the Fund and Master Fund are of a perpetual duration. The investment objective of the Fund, through its investment in the Master Fund, is to reflect the performance of the Index, over time, less the expenses of the Fund and the Master Fund's overall operations. The Fund will pursue its investment objective by investing substantially all of its assets in the Master Fund in a master-feeder structure. The Fund will hold no investment assets other than Master Fund Units. The Master Fund will be wholly-owned by the Fund and the Managing Owner. Each Share issued by the Fund will correlate with a Master Fund Unit issued by the Master Fund and held by the Fund.[8]

The Master Fund will invest in a portfolio of Commodity Futures Contracts on the Index Commodities. In addition, the Master Funds will also hold cash and U.S. Treasury securities for deposit with futures commission merchants (''FCM'') as margin and other high credit quality short-term fixed income securities.

*Trustee.* CSC Trust Company of Delaware (the ''Trustee'') is the sole trustee of the Fund and the Master Fund. The Trustee delegated to the Managing Owner certain of the power and authority to manage the business and affairs of the Fund and the Master Fund and has duties and liabilities to the Fund and the Master Fund.

*Managing Owner.* GreenHaven Commodity Services LLC, a Delaware limited liability company, will serve as Managing Owner of the Fund and the Master Fund. The Managing Owner will serve as the commodity pool operator and commodity trading advisor of the Fund and the Master Fund. The Managing Owner is registered as a commodity pool operator and commodity trading advisor with the Commodity Futures Trading Commission, or the CFTC, and with the National Futures Association, or the NFA. As a registered commodity pool operator and commodity trading advisor, with respect to both the Fund and the Master Fund, the Managing Owner is required to comply with various regulatory requirements under the Commodity Exchange Act and the rules and regulations of the CFTC and the NFA, including investor protection requirements, antifraud prohibitions, disclosure requirements, and reporting and recordkeeping requirements.

*Commodity Broker or Clearing Broker.* Fimat (the ''Commodity Broker'' or the ''Clearing Broker'') will execute and clear the Master Fund's Commodity Futures Contract transactions and will perform certain administrative services for the Master Fund. The Commodity Broker is registered with the CFTC as a FCM and is a member of the NFA in such capacity.

*Administrator.* The Bank of New York is the administrator for all of the Funds and the Master Funds (the ''Administrator''). The Administrator will perform or supervise the performance of services necessary for the operation and administration of the Fund and the Master Fund. These services include, but are not limited to, receiving and processing orders from Authorized Participants (as defined below) to create and redeem Baskets, accounting, net asset value (''NAV'')[9]

[8] *See infra* at note 9.

[9] For the Master Fund, the NAV is the total assets of the Master Fund less total liabilities of the Master Fund, determined on the basis of generally accepted accounting principles. NAV per Master Fund Unit is calculated by dividing by the number of outstanding units of the Master Fund. The NAV per Share will be the same because of the one-to-one

Continued

calculations and other fund administrative services.

*Distributor.* ALPS Distributor, Inc., is the distributor for both the Fund and the Master Fund (the ''Distributor''). The Distributor will assist the Managing Owner and the Administrator with certain functions and duties relating to the creation and redemption of Baskets, including receiving and processing orders from Authorized Participants to create and redeem Baskets, coordinating the processing of such orders and related functions and duties. The Distributor shall also review and file marketing materials with the Financial Industry Regulatory Authority, field investor calls, distribute prospectuses and consult with the Managing Owner and its affiliates in connection with marketing and sales strategies.

*e. Product Description*

*Creation and Redemption of Shares.* Issuances of the Shares will be made only in one or more blocks of 50,000 Shares, each a Basket (the ''Basket'' or ''Basket Aggregation''). The Fund will issue and redeem the Shares on a continuous basis, by or through participants that have entered into participant agreements (each, an ''Authorized Participant'') [10] with the Managing Owner at the NAV per Share next determined after an order to purchase the Shares is received in proper form. Following issuance, the Shares will be traded on the Exchange similar to other equity securities. The Shares will be registered in book entry form through DTC.

Baskets will be issued in exchange for a cash amount equal to the NAV per Share times 50,000 Shares (the ''Basket Amount''). The Basket Amount will be determined on each business day by the Administrator. Authorized Participants that wish to purchase a Basket must transfer the Basket Amount to the Administrator (the ''Cash Deposit Amount''). Authorized Participants that wish to redeem a Basket will receive cash in exchange for each Basket surrendered in an amount equal to the NAV per Basket (the ''Cash Redemption Amount''). The Commodity Broker will be the custodian for the Master Fund and responsible for safekeeping the Master Fund's assets.

All purchase orders must be placed by 10 a.m., New York time. The Basket will be issued at noon on the business day (T+1) immediately following the purchase order date at the Basket Amount as of the later of the closing time on the Exchange or the last to close futures exchange on which the Master Fund's assets are traded.[11] The Basket Amount necessary for the creation of a Basket will change from day to day. On each day that the Exchange is open for regular trading, the Administrator will adjust the Cash Deposit Amount as appropriate to reflect the prior day's NAV per Share (as described below) and accrued expenses. The Administrator will determine the Cash Deposit Amount for a given business day by multiplying the NAV per Share by the number of Shares in each Basket (50,000).

Likewise, all redemption orders must be placed by 10 a.m., New York time. The Shares will not be individually redeemable but will only be redeemable in Baskets. To redeem, an Authorized Participant will be required to accumulate enough Shares to constitute a Basket (*i.e.*, 50,000 shares). Upon the surrender of the Shares, the Administrator will deliver to the redeeming Authorized Participant the Cash Redemption Amount. The Authorized Participant is required to pay a transaction fee to the Fund of $500 per order to create or redeem Baskets.

On each business day, the Administrator will make available immediately prior to the opening of trading on Amex via the facilities of the CTA, the most recent Basket Amount for the creation of a Basket. The Exchange will disseminate at least every 15 seconds throughout the trading day, via the CTA, an amount representing on a per Share basis, the current value of the Basket Amount. It is anticipated that the deposit of the Cash Deposit Amount in exchange for a Basket will be made primarily by institutional investors, arbitrageurs, and the Exchange specialist. Baskets are then separable upon issuance into identical Shares that will be listed and traded on the Exchange.[12] The Shares are expected to be traded on the Exchange by professionals, as well as institutional and retail investors. Thus, the Shares may be acquired in two ways: (1) Through a deposit of the Cash Deposit Amount with the Administrator during normal business hours by Authorized Participants; or (2) through a purchase on the Exchange by investors.

*Net Asset Value.* Shortly after 4:00 p.m. ET each business day, the Administrator will determine the NAV for the Fund, utilizing the current settlement value of each Commodity Futures Contract held by the Master Fund. At or about 4 p.m. ET each business day, the Administrator will determine the Basket Amounts for orders placed by Authorized Participants that day. Thus, although Authorized Participants may place valid orders to purchase Shares throughout the trading day until 10 a.m. ET, the actual Basket Amounts are determined at 4 p.m. ET or shortly thereafter.

Shortly after 4 p.m. ET each business day, the Administrator, Amex and Managing Owner will disseminate the NAV per Share and the Basket Amount (for orders placed during the day). The Basket Amount and the NAV per Share are communicated by the Administrator to all Authorized Participants via facsimile or electronic mail message and the NAV per Share will be available on the Managing Owner's Web site at *http://www.Greenhavenllc.com.*[13] Amex will also disclose the NAV per Share and Basket Amount on its Web site.

In calculating the NAV per Share the Administrator will value all Commodity Futures Contracts based on that day's settlement price. However, if a futures contract on a trading day cannot be liquidated due to the operation of daily limits or other rules of an exchange upon which such futures contract is traded, the settlement price on the most recent trading day on which such Commodity Futures contract could have been liquidated will be used in determining the Fund's NAV per Share. Accordingly, the Administrator will typically use that day's futures settlement price for determining NAV per Share. When calculating NAV per Share, the Administrator will value the Commodity Futures Contracts held by the Master Fund on the basis of their then current market value.

The Exchange believes that the Shares will not trade at a material discount or

correlation between the Shares and the Master Fund Units.

[10] An ''Authorized Participant'' is a person, who at the time of submitting to the trustee an order to create or redeem one or more Baskets, (i) is a registered broker-dealer, (ii) is a Depository Trust Company (''DTC'') participant (such as a bank, broker, dealer and trust company) or is an Indirect Participant (i.e., someone who maintains either directly or indirectly, a custodial relationship with a DTC participant) and (iii) has in effect a valid participant agreement, which sets forth the procedures for the creation and redemption of Baskets of Shares and for the delivery of cash required for such creations or redemptions.

[11] The Master Fund is permitted to invest its assets in those futures contracts traded on futures exchanges that either have a comprehensive surveillance sharing agreement with the Exchange or are either SRO members or affiliate members of the Intermarket Surveillance Group (''ISG'').

[12] The Shares are separate and distinct from the shares of the Master Funds consisting primarily of Commodity Futures Contracts on the Index Commodities. The Exchange expects that the number of outstanding Shares will increase and decrease as a result of creations and redemptions of Baskets.

[13] If the NAV per Share is not disseminated to all market participants at the same time, the Exchange will halt trading in the Shares of a Fund.

premium to the Commodities Futures Contracts held by the Fund based on potential arbitrage opportunities. The arbitrage process, in this case, provides an opportunity to profit from the differences in prices of the same or similar securities or futures contracts, increases the efficiency of the markets, and serves to prevent potentially manipulative efforts. If the price of a Share deviates enough from the Indicative Fund Value (discussed below) on a per Share basis to create a material discount or premium, an arbitrage opportunity is created, allowing the arbitrageur to either buy Shares at a discount and immediately short the component future contracts of the CCI–TR Index or sell Shares short at a premium and buy the component futures contracts of the CCI–TR Index. Due to the fact that the Shares can be created and redeemed only in Basket Aggregations at NAV, the Exchange submits that arbitrage opportunities should provide a mechanism to mitigate the effect of any premiums or discounts that may exist from time to time.

*f. Dissemination of the Index and Underlying Contract Information*

Reuters America LLC is the owner, publisher and custodian of CCI–TR, which represents a total return version of the ninth revision (as of 1995) of the original Commodity Research Bureau (CRB) Index. Values of the underlying Index are computed by Reuters America LLC and widely disseminated every 15 seconds during the day.

CCI–TR is calculated to offer investors a representation of the investable returns that an investor should expect to receive by attempting to replicate the CCI index by buying the respective commodity futures and collateralizing their investment with United States Government securities (*i.e.*, 90-day T-Bills). The CCI–TR takes into account the economics of rolling listed commodity futures forward to avoid delivery and maintain exposure in liquid contracts. To achieve the objectives of the index, Reuters has established rules for calculation of the index. Specifically, only settlement and last-sale prices are used in the Index's calculation, bids and offers are not recognized—including limit-bid and limit-offer price quotes. Where no last-sale price exists, typically in the more deferred contract months, the previous days' settlement price is used.

The Managing Owner represents that it will seek to arrange to have the Index calculated and disseminated on a daily basis through a third party if the Index Sponsor ceases to calculate and disseminate the Index. If, however, the Managing Owner is unable to arrange the calculation and dissemination of the Index, the Exchange will undertake to delist the Shares.

The disseminated value of the Index will not reflect changes to the prices of the Index Commodities between the close of trading of the various Commodity Futures Contracts and the close of trading at Amex at 4:15 p.m. ET. In addition, Reuters and the Exchange on their respective Web sites will also provide any adjustments or changes to the Index.

The daily settlement prices for each of the Commodity Futures Contracts held by the Master Fund are publicly available on the NYBOT, NYMEX, CME and CBOT Web sites.[14] In addition, various data vendors and news publications publish futures prices and data. The Exchange represents that futures contract quotes and last sale information for the Commodity Futures Contracts on the Index Commodities is widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange further represents that complete real-time data for such Commodity Futures Contracts is available by subscription from Reuters and Bloomberg. The various futures exchanges also provide delayed futures information on current and past trading sessions and market news free of charge on their respective Web sites. The specific contract specifications for each Commodity Futures Contract are also available from the various futures exchanges on their Web sites as well as other financial informational sources.

*g. Availability of Information Regarding the Shares*

The Web sites for the Fund and/or the Exchange, which are publicly accessible at no charge, will contain the following information: (a) The current NAV per Share daily and the prior business day's NAV per Share and the reported closing price; (b) the mid-point of the bid-ask price[15] in relation to the NAV per Share as of the time it is calculated (the ''Bid-Ask Price''); (c) calculation of the premium or discount of such price against the NAV per Share; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV per Share, within appropriate ranges for each of the four previous calendar quarters; (e) the Prospectus; and (f) other applicable quantitative information.

As described above, the NAV per Share will be calculated and disseminated daily. Amex will disseminate for the Fund on a daily basis by means of CTA/CQ High Speed Lines information with respect to the corresponding Indicative Fund Value (as discussed below), recent NAVs per Share and Shares outstanding. The Exchange will also make available on its Web site daily trading volume of the Shares, closing prices of the Shares, and the NAV per Share. The closing price and settlement prices of the Commodity Futures Contracts held by the Master Fund are also readily available from the NYMEX, CBOT, CME and NYBOT, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, the Exchange will provide a hyperlink on its Web site at *http://www.amex.com* to the CCI's Web site at *http://www.crbtrader.com.*

*h. Dissemination of Indicative Fund Value*

As noted above, the Administrator calculates and disseminates, once each trading day, the NAV per Share to market participants. The Exchange represents that it will obtain a representation (prior to listing of the Funds) from the Trust that the NAV per Share will be calculated daily and made available to all market participants at the same time. In addition, the Administrator causes to be made available on a daily basis the corresponding Cash Deposit Amounts to be deposited in connection with the issuance of the respective Shares. In addition, other investors can request such information directly from the Administrator, and such information will be provided upon request.

In order to provide updated information relating to the Fund for use by investors, professionals and persons wishing to create or redeem the Shares, the Exchange will disseminate through the facilities of CTA, an updated Indicative Fund Value (the ''Indicative Fund Value'') for the Fund. The respective Indicative Fund Value will be disseminated on a per Share basis at least every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. ET. The Indicative Fund Value will be calculated based on the cash required for creations and redemptions (*i.e.*, NAV $\times$ 50,000) for the Fund adjusted to reflect the price changes of the Commodity Futures Contracts and the holdings of U.S. Treasury securities and other high credit quality short-term fixed income securities.

[14] See *http://www.nybot.com, http://www.nymex.com, http://www.cme.com,* and *http://www.cbot.com.*

[15] The bid-ask price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

The Indicative Fund Value will not reflect price changes to the price of an underlying commodity between the close of trading of the futures contract at the relevant futures exchange and the close of trading on Amex at 4 p.m. ET. The value of a Share may accordingly be influenced by non-concurrent trading hours between Amex and the various futures exchanges on which the futures contracts based on the Index commodities are traded. While the Shares will trade on Amex from 9 a.m. to 4 p.m. ET, the trading hours for each of the Index commodities underlying the futures contracts will vary as previously noted.

While the market for futures trading for each of the Index commodities is open, the Indicative Fund Value can be expected to closely approximate the value per Share of the Basket Amount. However, during Amex trading hours when the futures contracts have ceased trading, spreads and resulting premiums or discounts may widen, and therefore, increase the difference between the price of the Shares and the NAV of the Shares. Indicative Fund Value on a per Share basis disseminated during Amex trading hours should not be viewed as a real time update of the NAV, which is calculated only once a day.

The Exchange believes that dissemination of the Indicative Fund Value based on the cash amount required for a Basket Aggregation provides additional information that is not otherwise available to the public and is useful to professionals and investors in connection with the Shares trading on the Exchange or the creation or redemption of the Shares.

*i. Termination Events*

The Fund will be terminated if any of the following circumstances occur: (1) The filing of a certificate of dissolution or revocation of the Managing Owner's charter (subject to 90-day notice period) or upon the withdrawal, removal, adjudication or admission of bankruptcy or insolvency of the Managing Owner, or an event of withdrawal, subject to exceptions; (2) the occurrence of any event which would make unlawful the continued existence of the Trust or any Fund, as the case may be; (3) the event of the suspension, revocation or termination of the Managing Owner's registration as a CPO, or membership as a CPO with the NFA, subject to certain conditions; (4) the Trust or any Fund, as the case may be, becomes insolvent or bankrupt; (5) shareholders holding Shares representing at least 75% of the Fund NAV (excluding the Shares of the Managing Owner) notify the Managing Owner that they wish to dissolve the Trust; (6) the determination of the Managing Owner that the aggregate net assets of the Fund in relation to the operating expenses of the Fund make it unreasonable or imprudent to continue the business of the Fund, or, in the exercise of its reasonable discretion, the determination by the Managing Owner to dissolve the Trust because the aggregate net asset value of the Trust as of the close of business on any business day declines below $10 million; (7) the Trust or any Fund becoming required to register as an investment company under the 1940 Act; or (8) DTC is unable or unwilling to continue to perform its functions, and a compatible replacement is unavailable.

If not terminated earlier, the Fund will endure perpetually. Upon termination of the Fund, holders of the Shares will surrender their Shares and receive from the Administrator, in cash, their portion of the value of the Fund.

*j. Criteria for Initial and Continued Listing*

The Fund will be subject to the criteria in Commentary .07(d) of Amex Rule 1202 for initial and continued listing of the Shares.

The Fund will accept subscriptions for Shares in Baskets from Authorized Participants at $30.00 per Share ($1.5 million per Basket) during an initial offering period commencing with the initial effective date of the prospectus, and terminating no later than the 90th day following such date, unless (i) the subscription minimum is reached before that date and the Managing Owner determines to end the initial offering period early, or (ii) that date is extended by the Managing Owner for up to an additional 90 days.

The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity and to further the objectives of the Fund.

The Exchange represents that, for the initial and continued listing, the Shares must be in compliance with Section 803 of the Amex Company Guide and Rule 10A–3 under the Act.

*k. Original and Annual Listing Fees*

The Amex original listing fee applicable to the listing of the Fund is $5,000. In addition, the annual listing fee applicable under Section 141 of the Amex Company Guide will be based upon the year-end aggregate number of shares in the Fund outstanding at the end of each calendar year.

*l. Disclosure*

The Exchange, in an Information Circular (described below) distributed to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of the prospectus delivery requirements applicable to the Fund. The Exchange notes that investors purchasing Shares directly from the Fund (by delivery of the corresponding Cash Deposit Amounts) will receive a prospectus. Amex members purchasing Shares from the Administrator for resale to investors will deliver a prospectus to such investors.

*m. Purchase and Redemptions in the Basket Amount*

In the Information Circular (described below), members and member organizations will be informed that procedures for purchases and redemptions of Shares in the Basket Amount are described in the Prospectus and that Shares are not individually redeemable but are redeemable only in Baskets or multiples thereof.

*n. Trading Rules*

The Shares are equity securities subject to Amex Rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities and account opening and customer suitability (Rule 411). Initial equity margin requirements of 50% will apply to transactions in the Shares. Shares will trade on Amex until 4:15 p.m. ET each business day and will trade in a minimum price variation of $0.01 pursuant to Amex Rule 127–AEMI. Trading rules pertaining to odd-lot trading in Amex equities (Rule 205–AEMI) will also apply.

Amex Rule 154–AEMI (c)(ii) provides that stop and stop limit orders to buy or sell a security the price of which is derivatively priced based upon another security or index of securities, may be elected by a quotation, as set forth in subparagraphs(c)(ii)(1)–(4) of Rule 154–AEMI.

Amex Rule 126A–AEMI complies with Rule 611 of Regulation NMS which requires, among other things, that the Exchange adopt and enforce written policies and procedures that are reasonably designed to prevent trade through of protected quotations.[16]

Specialist transactions of the Shares made in connection with the creation and redemption of Shares will not be

[16] *See* Securities Exchange Act Release No. 54552 (September 29, 2006), 71 FR 59546 (October 10, 2006) (SR–Amex–2005–104).

subject to the prohibitions of Amex Rule 190(a).[17] The Shares will generally be subject to the Exchange's stabilization rule (Amex Rule 170), except that specialists may buy on ''plus ticks'' and sell on ''minus ticks,'' in order to bring the Shares into parity with the underlying commodity or commodities and/or futures contract price. Commentary .07(f) to Amex Rule 1202 sets forth this limited exception to Amex Rule 170.

The Exchange's surveillance procedures for the Shares will be similar to those used for other TIRs and exchange-traded funds and will incorporate and rely upon existing Amex surveillance procedures governing options and equities.

The trading of the Shares will be subject to certain conflict of interest provisions set forth in Commentary .07(e) to Amex Rule 1202.

*o. Suitability*

The Information Circular (described below) will inform members and member organizations of the characteristics of the Fund and of applicable Exchange rules, as well as of the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

The Exchange notes that pursuant to Amex Rule 411, members and member organizations are required in connection with recommending transactions in the Shares to have a reasonable basis to believe that a customer is suitable for the particular investment given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member.

*p. Information Circular*

Amex will distribute an information circular to its members in connection with the trading of the Shares (''Information Circular''). The Information Circular will discuss the special characteristics and risks of trading this type of security, such as currency fluctuation risk. Specifically, the Information Circular, among other things, will discuss what the Shares are, how a Basket is created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing the Shares prior to or concurrently with the confirmation of a transaction, applicable Amex rules, dissemination information, trading information and applicable suitability rules. The Information Circular will also explain that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also reference the fact that the CFTC has regulatory jurisdiction over the trading of Commodity Futures Contracts.

The Information Circular will also notify members and member organizations about the procedures for purchases and redemptions of Shares in Baskets, and that Shares are not individually redeemable but are redeemable only in one or more Baskets. The Information Circular will advise members of their suitability obligations with respect to recommended transactions to customers in the Shares. The Information Circular will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

The Information Circular will disclose that the trading hours of the Shares will be from 9:30 a.m. to 4:15 p.m. ET and that the NAV for the Shares will be calculated shortly after 4 p.m. ET each trading day. Information about the Shares and the Index will be publicly available on Amex's Web site and the Fund's Web site.

*q. Surveillance*

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares and to deter and detect violations of applicable rules. Specifically, the Exchange will rely on its existing surveillance procedures applicable to TIRs, Portfolio Depository Receipts and Index Fund Shares, which the Exchange states have been deemed adequate under the Act. The Exchange currently has in place comprehensive surveillance sharing agreements with ICE Futures, LME and NYMEX for the purpose of providing information in connection with trading in or related to futures contracts traded on their respective exchanges comprising the Indexes. The Exchange also notes that CBOE, CME and NYBOT are members of the Intermarket Surveillance Group (''ISG''). As a result, the Exchange asserts that market surveillance information is available from relevant futures exchanges, if necessary, due to regulatory concerns that may arise in connection with the Commodity Futures Contracts.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act[18] in general, and furthers the objectives of section 6(b)(5)[19] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for 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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange did not receive any written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.[20]

**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–Amex–2007–53 on the subject line.

[17] *See* Commentary .05 to Amex Rule 190.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] Amex requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof.

*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–Amex–2007–53. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 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–Amex–2007–53 and should be submitted on or before December 11, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–22909 Filed 11–23–07; 8:45 am]

**BILLING CODE 8011–01–P**

[21] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56804; File No. SR–Amex–2006–107]**

## Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Eliminate Options Specialists' Agency Responsibilities and Establish Amex Book Clerks

November 16, 2007.

### I. Introduction

On November 14, 2006, 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'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposal to eliminate the agency obligations of Exchange options specialists and establish Amex book clerks (''ABCs''). The Exchange filed Amendment No. 1 to the proposed rule change on March 29, 2007. The proposal as amended was published for comment in the **Federal Register** on April 13, 2007.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

### II. Description of the Proposal

The Exchange has proposed to eliminate the obligation and ability of an Exchange options specialist to act as an agent in connection with orders in his or her assigned options classes. This proposal would permit the Exchange to designate Exchange employees or independent contractors to serve as ABCs, responsible for maintaining and operating the ANTE Central Book (*i.e.*, the specialist's customer limit order book) and the ANTE Display Book.[4] The Exchange also seeks to amend certain Exchange rules relating to the operation of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'') to accommodate the implementation of pertinent ABC rules and other proposed rule changes described herein.[5] Finally, the proposed rule change would implement several other amendments to conform other Exchange rules to the proposal. The Exchange has noted that its proposal substantially mirrors changes recently adopted by the Chicago Board Options Exchange to eliminate DPM agency responsibilities and establish PAR Officials.[6] The following description summarizes certain significant effects this proposed rule change would have on existing Exchange rules.[7]

Under the current rules of the Exchange, options specialists are required to execute options orders on an agency basis for those classes of options assigned to them.[8] Accordingly, all options specialists on the Amex presently act as both agent and principal for orders in their respective assigned options classes.

The Exchange has now determined that it is in the best interest of the Exchange, its members, and investors to eliminate the agency obligation of options specialists. The Exchange has proposed to amend its rules to remove an options specialist's obligation to act as an agent in its allocated securities on the Exchange.[9] The Exchange has further proposed to designate ABCs who would be responsible for handling certain orders in the same manner as they are currently handled by the options specialists.[10] The ABCs will maintain and operate the customer limit order book,[11] effect proper executions of orders that are routed to the customer limit order book,[12] display eligible limit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55583 (April 5, 2007), 72 FR 18695 (''Notice'').

[4] The Exchange submits that all incoming customer orders are represented in the ANTE Central Book, and if marketable, will be automatically executed subject to a number of limited exceptions. Orders that are otherwise eligible for automatic execution may not receive an automatic execution: (i) *Whenever* the Amex Best Bid or Offer (ABBO) crosses the National Best Bid or Offer (NBBO) and causes an inversion in the quote; or (ii) whenever a better bid or offer is being disseminated by another options exchange and the order is not eligible for automatic price matching. In addition, if quotes are deemed unreliable or the Exchange is experiencing communications or systems problems, non-firm markets or delays in the dissemination of quotes by the Options Price Reporting Authority, orders will not be automatically executed. In these limited cases, incoming customer orders will be routed to the ANTE Display Book for manual handling.

[5] Exchange rules governing the operation of the Linkage Plan are set forth under Amex Rules 940 through 945 and Amex Rule 941–ANTE.

[6] *See* Securities Exchange Act Release No. 52798 (November 18, 2005), 70 FR 71344 (November 28, 2005) (SR–CBOE–2005–46).

[7] For a complete description of the proposed rule change, *see* the Notice, *supra* note 3.

[8] *See* Amex Rule 950–ANTE(l), incorporating Amex Rule 170 to options transactions.

[9] *See* Proposed Amex Rules 950–ANTE(f) cmt. .01 and 950–ANTE(l) cmt. .01.

[10] *See* Proposed Amex Rule 995–ANTE.

[11] *See* Proposed Amex Rule 995–ANTE(a)(i).

[12] *See* Proposed Amex Rule 995–ANTE(a)(ii). The requirement that options specialists effect proper executions would require an options specialist to use due diligence to execute customer orders at the best prices available under the rules of the Exchange. *See* Proposed Amex Rule 995–ANTE(b)(ii).

orders,[13] undertake the obligations related to handling certain Linkage orders,[14] and act as agent for orders that, for various reasons, cannot be automatically executed and so are routed to the ANTE Display Book for manual handling.[15]

The Exchange has proposed to amend its rules to provide that the Exchange, via the ABCs, and not the options specialists, would be responsible for handling Linkage orders. Under the proposal, ABCs would: (i) Use an options specialist's account to route Principal Acting as Agent (''P/A'') Orders and Satisfaction Orders to away markets based on prior instructions that must be provided by the options specialist to the ABC,[16] and (ii) handle all Linkage orders or portions of Linkage orders received by the Exchange that are not automatically executed.[17] The ABC also would use the specialist's account to fill incoming Satisfaction Orders that result from a Trade Through [18] that the Exchange effects.[19]

The Exchange has proposed measures designed to ensure the independence of ABCs from Exchange members. An ABC would be required to be an Exchange employee or independent contractor, and his or her compensation would be determined and paid solely by the Exchange. In addition, the ABC would be prohibited from having an affiliation with any member that is approved to act as a specialist, registered options trader (''ROT''), remote registered options trader (''RROT'') or supplemental registered options trader (''SROT'') on the Exchange.

Because the options specialists would no longer be operating the customer limit order book, the Exchange proposes to amend Rule 958A—ANTE, which defines when an options specialist's firm quote obligation attaches. Amex Rule 958A—ANTE currently provides that, in the case of an order received by the options specialist, the options specialist's firm quote obligation attaches at the time the order is received by such specialist, regardless of whether the options specialist is actually aware of the order at that time. This rule would be modified to provide that the firm quote obligation would attach, when an options specialist is the responsible broker or dealer, at the same time those obligations attach with respect to each other responsible broker or dealer—that is, when the order is announced to the trading crowd either via electronic display or by the ABC. The Exchange has proposed this clarification in light of the fact that options specialists will no longer represent orders on the customer limit order book in an agency capacity from the moment such orders are received on the book.

Finally, to ensure a smooth and orderly transition of the responsibility for operating the customer limit order book and executing agency orders from options specialists to ABCs, the Exchange proposes to implement this rule change to all applicable trading posts over a 180-day period from the effective date of this rule change. During this 180-day transition period, any options specialist who continues to operate the customer limit order book would continue to be subject to the same agency obligations as currently provided under Amex Rules 950–ANTE(l) and 958A–ANTE(e), except that, upon the approval of this proposal, these obligations instead would be reflected in a Regulatory Circular.

## III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[21] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.

With this proposal, Amex seeks to eliminate potential conflicts of interest that may currently arise for its options specialists in the handling of customer orders. Currently, Amex options specialists trade for their own accounts in order to assist in the maintenance of a fair and orderly market on the Exchange, and also act as agents for certain orders in their allocated options. Amex has proposed to eliminate an options specialist's obligation and permission to act as agent for customer orders in his or her allocated securities.[22]

Instead, Amex has proposed that orders that currently are represented by options specialists as agent be handled by Exchange employees known as Amex Book Clerks, or ABCs. ABCs would be independent from options specialists, as Amex has proposed to prohibit affiliations between ABCs and specialists, ROTs, RROTs, and SROTs in order to ensure the ABCs are independent from Exchange members' interests. Further, the compensation of ABCs would be determined and paid exclusively by the Exchange. The Commission believes that the Amex's proposal adequately assures the independence of the ABC in a manner designed to mitigate potential conflicts of interest with the options specialist. Further, the Commission believes that eliminating an options specialist's obligation to act as agent for certain orders in its assigned classes will promote just and equitable principles of trade and protect investors and the public interest, because it will greatly reduce any potential conflicts of interest that may have previously arisen when a specialist traded for its own account while acting as agent for certain customer orders.[23]

[13] *See* Proposed Amex Rule 995–ANTE(b)(i).

[14] *See* Proposed Amex Rule 995–ANTE(e).

[15] *See* Proposed Amex Rule 995–ANTE(b)(iv); *see also supra* note 4.

[16] *See* Proposed Amex Rule 950–ANTE(l) cmt. .05.

[17] *See* Proposed Amex Rule 995–ANTE(e).

[18] *See* Amex Rule 940(b)(19).

[19] *See* Proposed Amex Rule 950–ANTE(l) cmt. .05.

[20] 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).

[21] 15 U.S.C. 78f(b)(5).

[22] The Commission notes that Amex Rule 950–ANTE, as amended, will no longer permit an options specialist to act as an agent for customer orders. However, to the extent that an options specialist nevertheless undertakes to represent a customer's order in violation of Amex Rule 950–ANTE, the options specialist will assume all the duties and liabilities of an agent to a principal during the course of such representation.

[23] In addition, the Commission notes that Amex Rule 193, Affiliated Persons of Specialists, will have the effect of mitigating conflicts of interest that might arise when an affiliate of the options specialist acts as agent for a customer order in one of the specialist's assigned options classes. Amex Rule 193 provides that any approved person or member organization which is affiliated with a specialist must either: (a) Be subject to Amex Rule 170(e), which provides that ''[n]o member . . . officer, employee, or approved person who is affiliated with a specialist or specialist member organization, shall, during the period of such affiliation, purchase or sell any security in which such specialist is registered for any account in which such person or party has a direct or indirect interest''; or (b) ''establish[] and obtain[] Exchange approval of procedures restricting the flow of material, non-public corporate or market information between itself and the specialist member organization, and any member, officer, or employee associated therewith.'' The Exchange represented that Rule 193 will have the effect of restricting the sharing of material, nonpublic information between the options specialist and any affiliate of the options specialist who acts as agent for a customer order. Telephone conversation between Jeffrey P. Burns, Vice President and Associate General Counsel, Amex, and Nathan Saunders, Special Counsel, Division, Commission, on November 14, 2007.

Pursuant to the proposed rule change, ABCs will undertake responsibilities comparable to those currently held by options specialists with respect to customer orders. For example, an ABC must use due diligence to execute the orders placed in his or her custody at the best prices available to him or her under Exchange rules. In addition, ABCs will assume the obligations related to displaying public customer orders that improve Amex's disseminated quote by maintaining the ANTE Central Book, the Exchange's automated limit order display facility, and keeping it active. Accordingly, the Commission believes that the Exchange's proposal should ensure that customers' orders continue to be represented and handled in a timely fashion on the Exchange. The Commission therefore believes that the proposal will continue to protect customer orders while preventing fraudulent and manipulative acts and practices.

The ABCs also would assume responsibilities related to Linkage orders. An ABC would use an options specialist's account to route P/A Orders and Satisfaction Orders to other participants in the Linkage Plan based on prior written instructions provided by the options specialist to the ABC.[24] The written instructions provided by the options specialist will also include direction as to how the ABC should handle responses to Linkage orders routed to other Linkage Participants that are not responded to in a timely manner.[25] The ABC will also use the options specialist's account to fill any Satisfaction Order that results from a Trade Through that is effected on the Exchange by ABCs. Finally, the ABC will handle all Linkage orders or portions of Linkage orders received by the Exchange that are not automatically executed.

The Commission believes that the proposed rules governing the handling of Linkage orders by the ABC and the use of the options specialist's accounts for routing Linkage orders is consistent with the promotion of a national market system because, among other things, it will allow P/A Orders that reflect the terms of Amex customer orders to be generated by Amex and routed to other Linkage Participant markets, which will allow a Amex customer order to receive possible execution at a price better than the price disseminated by Amex.

## IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,[26] that the proposed rule change (File No. SR–Amex–2006–107), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–22911 Filed 11–23–07; 8:45 am]

**BILLING CODE 8011–01–P**

[24] The Commission today is also granting the Exchange a conditional exemption from the requirement in Rule 608(c) of Regulation NMS promulgated under the Act that the Exchange comply with and enforce compliance by its members with certain provisions of the Linkage Plan to facilitate the establishment of ABCs and their handling of Linkage Orders. *See* Letter from Elizabeth K. King, Associate Director, Division of Trading and Markets, Commission, to Jeffrey P. Burns, Vice President and Associate General Counsel, Amex, dated November 16, 2007.

[25] Amex Rule 942(d)(3) specifically addresses the situations in which an Amex member (or, as proposed to be amended, an ABC acting as employee of the Exchange) does not receive a response to a Linkage order within 20 seconds of sending the order.

[26] 15 U.S.C. 78s(b)(2).

[27] 27 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56808; File Nos. SR–Amex–2007–117; SR–BSE–2007–44; SR–CBOE–2007–121; SR–ISE–2007–92; SR–NYSEArca–2007–109; SR–Phlx–2007–86]**

## Self-Regulatory Organizations: American Stock Exchange LLC, Chicago Board Options Exchange, Incorporated and International Securities Exchange, LLC: Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Changes; Boston Stock Exchange, Inc.; NYSE Arca, Inc.; and Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Changes, as Amended, Relating to the Elimination of the Class Gate

November 16, 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 November 1, 2007, September 19, 2007, October 9, 2007, October 1, 2007, October 18, 2007, and November 14, 2007, American Stock Exchange LLC (''Amex''), Boston Stock Exchange, Inc. (''BSE''), Chicago Board Options Exchange, Incorporated (''CBOE''), International Securities Exchange, LLC (''ISE''), NYSE Arca, Inc. (''NYSE Arca''), and Philadelphia Stock Exchange, Inc. (''Phlx'') (each, an ''Exchange'' and, collectively, the ''Exchanges''), respectively, filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I and II below, which Items have been substantially prepared by the Exchanges. On November 13, 2007, November 6, 2007, and November 16, 2007, BSE, NYSE Arca, and Phlx respectively, filed Amendment No. 1 to their proposed rule changes. On November 16, 2007, BSE filed Amendment No. 2 to its proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule changes, as amended, from interested persons and is approving the proposed rule changes, as amended, on an accelerated basis.

### I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

Each Exchange proposes to eliminate a restriction on Principal Order (''P Order'') [3] access through Linkage. The text of the proposed rule changes are available at the Exchanges' Web sites,[4] the Exchanges' principal offices, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, each Exchange included statements concerning the purpose of, and basis for, its proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchanges have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] *See* Section 2(16)(b) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'').[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (''Linkage'') proposed by Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, Pacific Exchange, Inc. (n/k/a NYSE Arca), and BSE joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[4] *See http://www.amex.com, http://www.bostonstock.com, http://www.cboe.com, http://www.iseoptions.com, http://www.nyse.com,* and *http://www.phlx.com.*

*A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes*

1. Purpose

The Exchanges propose to eliminate the Linkage Class Gate restriction from their respective rules.[5] These changes will conform the Exchanges' rules to changes recently approved by the Commission to section 7(a)(ii)(C) of the Linkage Plan.[6]

Each Exchange currently has a rule which provides that, once the Exchange automatically executes a P Order in a series of an Eligible Option Class,[7] it may reject any other P Orders sent in the same Eligible Option Class by the same Exchange for 15 seconds after the initial execution unless there is a price change in the receiving Exchange's disseminated offer (bid) in the series in which there was the initial execution and such price continues to be the national best bid or offer. After the 15-second period, and until the sooner of one minute after the initial execution or a change in its disseminated offer (bid), each Exchange's rule provides that the Exchange that provided the initial execution is not obligated to automatically execute any P Orders received from the same Exchange in the same Eligible Option Class. The Exchanges proposed to eliminate the Class Gate provision from their rules, because all Exchanges have removed restrictions on non-customer access to the automatic execution systems, rendering the Class Gate restriction unnecessary.

2. Statutory Basis

The Exchanges believe the proposed rule changes are consistent with the Act and the rules and regulations under the Act applicable to national securities exchanges and, in particular, the requirements of section 6(b) of the Act.[8] Specifically, the Exchanges believe the proposed rule changes are consistent with the requirements of section 6(b)(5) of the Act[9] that the rules of an exchange be designed to prevent fraudulent and manipulative acts, 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 Organizations' Statement on Burden on Competition*

The Exchanges believe that the proposed rule changes would impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others*

The Exchanges have neither solicited nor received comments on these proposals.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are 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 Numbers SR–Amex–2007–117; SR–BSE–2007–44; SR–CBOE–2007–121; SR–ISE–2007–92; SR–NYSEArca–2007–109; and SR–Phlx–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 Numbers SR–Amex–2007–117; SR–BSE–2007–44; SR–CBOE–2007–121; SR–ISE–2007–92; SR–NYSEArca–2007–109; and SR–Phlx–2007–86. These file numbers 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 submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 20549–1090, 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 offices of the Exchanges. 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 Numbers SR–Amex–2007–117; SR–BSE–2007–44; SR–CBOE–2007–121; SR–ISE–2007–92; SR–NYSEArca–2007–109; and SR–Phlx–2007–86 and should be submitted on or before December 17, 2007.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Changes**

After careful consideration, the Commission finds that the proposed rule changes, as amended, are consistent with the requirements of the Act and the rules and regulations thereunder, applicable to national securities exchanges.[10] In particular, the Commission finds that the proposals are consistent with the provisions of section 6(b)(5) of the Act[11] in that they 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 Commission recognizes that, at the time of the creation of the Linkage, certain Exchanges had restrictions on non-customer access to their automatic execution systems. The Class Gate restriction in the Exchanges' rules served to protect those Exchanges that did not limit non-customer access against being obligated to automatically execute an unlimited number of P Orders. Since the implementation of the Linkage, all Exchanges have removed restrictions on non-customer access to their automatic execution systems. All of the Exchanges, therefore, allow access to their trading platforms orders on behalf of non-member market makers. The Commission believes that the greater access to automatic execution systems has rendered the Class Gate

[5] *See* Amex Rule 941(c)(2); Boston Options Exchange Facility Rule, Chapter XII, Section 2(d)(ii); CBOE Rule 6.81(c)(2); ISE Rule 1901(d)(2); NYSE Arca Rule 6.93(c)(2); and Phlx Rule 1084(d)(2).

[6] *See* Securities Exchange Act Release No. 56806 (November 16, 2007) (Joint Amendment No. 24 of the Linkage Plan).

[7] *See* Section 2(8) of the Linkage Plan.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

provision unnecessary and that its elimination should facilitate a more efficient operation of the options markets.

The Commission also finds good cause, consistent with section 19(b)(2) of the Act [12] for approving the proposal prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. Granting accelerated approval would facilitate the implementation of these changes in conjunction with Joint Amendment No. 24 to the Linkage Plan.[13]

**V. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (SR–Amex–2007–117; SR–BSE–2007–44; SR–CBOE–2007–121; SR–ISE–2007–92; NYSEArca–2007–109; and SR–Phlx–2007–86), as amended, are hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–22916 Filed 11–23–07; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56816; File No. SR–CBOE–2007–130]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change To Amend its Rule 4.20 Regarding Anti-Money Laundering

November 19, 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 November 2, 2007, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the CBOE. On November 9, 2007, CBOE filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

CBOE proposes to amend CBOE Rule 4.20, codifying the Anti-Money Laundering Compliance Program (the ''AML Program''), to: (1) Establish independent testing for compliance be conducted at least annually by members with a public business, or every two years if no public business is conducted; and (2) clarify the persons designated to implement and monitor the Anti-Money Laundering Compliance Rule. The text of the proposed rule change is provided below. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), 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, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Financial institutions, including broker-dealers, must develop and implement AML Programs pursuant to the Bank Secrecy Act,[3] as amended by Section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (''PATRIOT Act'').[4] Consistent with the Department of Treasury's (''Treasury'') regulation 31 CFR 103.120 under the Bank Secrecy Act, CBOE Rule 4.20 requires that each member organization and each member not associated with a member organization develop and implement a written AML program and specifies the minimum requirements for these programs.

The AML program must include the development of internal policies, procedures and controls; the designation of a person to implement and monitor the day-to-day operations and internal controls of the program (commonly referred to as an ''AML Officer''); ongoing training for appropriate persons; and an independent testing function for overall compliance.

In order to provide interpretive clarity to the requirements under CBOE Rule 4.20 with respect to independent testing and AML Officers, as well as to clarify references to the Bank Secrecy Act, CBOE proposes the following amendments to CBOE Rule 4.20.

References to Bank Secrecy Act

The proposed rule change would delete references to certain sections of the Bank Secrecy Act and a reference to USA PATRIOT Act to more clearly reflect the requirements under CBOE Rule 4.20.

Timeframes for Independent Testing

The proposed rule change would require that independent testing of AML programs be conducted, at a minimum, on an annual (calendar-year) basis by members or member organizations, unless the member or member organization does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (e.g., engages solely in proprietary trading, or conducts business only with other broker-dealers), in which case such independent testing is required every two years (on a calendar-year basis). CBOE believes these timeframes are reasonable in that they require more frequent testing of AML programs designed to monitor a business with customers from the general public, which may be more susceptible to money laundering schemes than a strictly proprietary business involving transactions with other broker-dealers. Further, the one-year time frame for testing is consistent with standard industry practice in that it is similar to generally accepted guidelines for conducting tests in the context of, for instance, general audits and branch office visits. However, the proposed rule change establishes only a minimum requirement and makes clear that members should undertake more frequent testing when circumstances warrant (e.g. should the business mix of the member or member organization materially change; in the event of a merger or acquisition; in light of systemic weaknesses uncovered via

[12] 15 U.S.C. 78s(b)(2).

[13] *See* note 6, *supra.*

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 31 U.S.C. 5311 *et seq.*

[4] Pub. L. 107–56, 115 Stat. 272 (2001).

testing of the AML Program; or in response to any other ''red flags'').

Qualification and Independence Standards for Testing

The proposed rule change would further require that testing be conducted by a designated person with a working knowledge of applicable requirements under the Bank Secrecy Act and its implementing regulations. Such person need not be an employee of the member or member organization since the responsibility being delegated is essentially an auditing function and, as such, it would not be unusual or ineffective for it to be performed by an independent outside party.

The proposed rule change does not preclude an employee of the member or member organization from conducting the required independent testing of the AML Program; however, the proposed ''independence'' standard would prohibit testing from being conducted by a person who performs the functions being tested, by the designated AML Officer or by a person who reports to either.

The proposed rule change would be generally consistent with the approach taken by the NYSE and NASD, n/k/a the Financial Industry Regulatory Authority, Inc., (''FINRA''),[5] regarding independent testing of AML Programs, with variations where necessary to account for the differences in CBOE membership—in particular, differences in firm size, types of business conducted, and overall business models. It should be noted that CBOE's membership is comprised of an overwhelming majority of members who are broker-dealers that are not members of either NYSE or FINRA and who conduct business only with other broker-dealers. It should be further noted that CBOE conducts routine examinations of all capital computing members to test the adequacy of AML compliance programs with the objective of determining whether member firms' AML compliance programs are reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and applicable Treasury, Commission, and CBOE rules. Additionally, for all non-capital computing CBOE members, CBOE requires that each broker-dealer member file an annual attestation that identifies: (1) The designated AML Compliance Officer; (2) the broker-dealer annual training, including a list of attendees and date conducted; (3) the independent review, including date and identification of the reviewer. The attestation also includes a statement regarding broker-dealer members maintaining written documentation of the independent review conducted.

AML Officer

The proposed rule change would also clarify that the AML Officer(s) must be an associated person of the member. This would not prohibit a member that is part of a diversified financial institution from designating an AML Officer that is employed by the member's parent company, sister company, or other affiliate. However, if such a person is designated as a member's AML Officer, CBOE would consider that person to be an associated person of the member with respect to those activities performed on behalf of the member.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with Section 6 of the Act[6] in general and furthers the objectives of Section 6(b)(5)[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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. CBOE believes that the proposed rule change is designed to accomplish these ends by requiring members to conduct periodic tests of their AML compliance programs, preserve the independence of their testing personnel, and ensure the accuracy of their AML compliance person information.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2007–130 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-CBOE–2007–130. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent 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

[5] 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* Securities Exchange Act Release No. 56146 (July 26, 2007); 72 FR 42190 (Aug. 1, 2007).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–130 and should be submitted on or before December 17, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–22894 Filed 11–23–07; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56814; File No. SR–CBOE–2007–87]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change, and Amendment No. 1 Thereto, To Amend the Quoting Requirements Applicable to the Hybrid Opening System

November 19, 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 July 25, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On November 19, 2007, CBOE filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rule pertaining to the Hybrid Opening System (''HOSS'') as well as related rules pertaining to the obligations of designated primary market-makers (''DPMs''), electronic designated primary market-makers (''e–DPMs'') and lead market-makers (''LMMs'') during opening rotations. The text of the proposed rule change is available at the Exchange, on the Exchange's Web site (*http://www.cboe.org*), and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its HOSS procedures contained in CBOE Rule 6.2B. HOSS is the Exchange's automated system for initiating trading at the beginning of each trading day. Previously, for each option class approved for trading, HOSS had been programmed to open an option series only if the DPM or LMM, as applicable, for the particular option class submitted a quote that complies with the legal quote width requirements of paragraph (b)(iv) to CBOE Rule 8.7, *Obligations of Market-Makers.* The HOSS procedures were revised in 2005 and, currently, HOSS is programmed to open an option series as long as any market maker,[3] not just the DPM or LMM, has submitted an opening quote that complies with the legal width quote requirements of CBOE Rule 8.7(b)(iv).[4] However, even though the procedures were changed to permit HOSS to automatically open a series without a DPM's or LMM's quote, DPMs (as well as e–DPMs) or LMMs still remain obligated under CBOE rules to timely submit opening quotes.[5] The proposed rule change is designed to give some relief to DPMs, e–DPMs and LMMs from this opening quote requirement. Because HOSS is programmed to automatically open based on any market-maker's quote, the Exchange does not believe that DPMs, e–DPMs and LMMs should be viewed as violating the opening quote requirement when they inadvertently miss the opening simply because another market-maker entered a quote before the DPM, e–DPM or LMM.

In an effort to provide more flexibility to ensure that all options series are opening in a fair and orderly manner, the Exchange is proposing to modify the HOSS procedures and related opening quote obligations of DPMs, e–DPMs and LMMs to allow the parameters to be configured so that an option series will open: (i) If at least one market maker has submitted an opening quote (which is how HOSS currently operates) or (ii) only if a DPM or LMM, as applicable, has submitted an opening quote (which is how HOSS previously operated). Determinations on the particular configuration would be made on a class-by-class basis by the appropriate Exchange Procedure Committee and announced to the membership via Regulatory Circular. There will be no set factors for making the determinations; it will simply be the method the appropriate Exchange Procedure Committee thinks would work best to achieve a competitive, efficient and orderly opening in the particular class. The appropriate Exchange Procedure Committee might consider such things as trading in the underlying or related products, trading in the option on competing exchanges, how effectively opens have occurred in the past, liquidity and/or other factors. For example, if the Exchange desires to increase liquidity in a particular class on the open, the appropriate Exchange

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This could include a quote from a DPM, e–DPM, LMM, Market-Maker or Remote Market-Maker.

[4] *See* Securities Exchange Act Release No. 52234 (August 10, 2005), 70 FR 48214 (August 16, 2005) (SR–CBOE–2005–40). Other factors must also be satisfied for HOSS to open an options series. For example, the opening price for the series must be within an acceptable range and the opening trade cannot create a market order imbalance. *See, e.g.*, CBOE Rule 6.2B(e)(ii)–(iii).

[5] Currently, DPMs, e–DPMs and LMMs are required to enter opening quotes in accordance with CBOE Rule 6.2B in 100% of the series of each appointed class; whereas, other Market-Makers and Remote Market-Makers are permitted, but not obligated, to enter opening quotes in accordance with CBOE Rule 6.2B. *See* existing CBOE Rules 6.2B, 8.15A, *Lead Market-Makers in Hybrid Classes* (subparagraph (b)(iv) of this rule has been interpreted by the Exchange to require an LMM to enter opening quotes in 100% of the series of each appointed class), 8.85, *DPM Obligations,* 8.93, *e–DPM Obligations.*

Procedure Committee might determine to configure HOSS so that the DPM's quote must be present to open in order to ensure that there is sufficient liquidity available.

The Exchange is also proposing that, in the event HOSS is configured to open a series based on any market maker's quote, the DPM and any e–DPMs appointed to the class or, as applicable, the LMMs appointed to the class, would be obligated to ensure that a trading rotation is initiated promptly following the opening of the underlying security (or promptly after 8:30 a.m. (Central Time) in an index class) in accordance with CBOE Rule 6.2B in 100% of the series of each allocated class by entering opening quotes as necessary. In other words, if another market maker has already entered an opening quote in a particular series, it would not be necessary for the DPM and e–DPM, or LMM, to enter an opening quote for HOSS to automatically open the series. However, if no other market maker has entered an opening quote, the DPM and e–DPM, or LMM, would be responsible for ensuring that an opening quote is promptly entered so that HOSS can automatically open the series. This obligation to ensure that an opening rotation is conducted promptly in an allocated class by entering opening quotes only as necessary will be in lieu of the existing obligation, which requires DPMs, e–DPMs and LMMs to enter opening quotes in 100% of the series of each allocated class.[6] When HOSS is programmed to automatically open a series with any market maker's quote, the Exchange does not believe it is necessary for the maintenance of fair and orderly markets to always require DPMs, e–DPMs and LMMs to enter opening quotes.[7]

2. Statutory Basis

The Exchange states that, by allowing for more flexibility in the manner in which HOSS is programmed to conduct an opening rotation, it will enhance its ability to conduct fair and orderly openings. As such, CBOE believes this 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, which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for 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 solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2007–87 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–87. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–87 and should be submitted on or before December 17, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–22946 Filed 11–23–07; 8:45 am]

**BILLING CODE 8011–01–P**

[6] *See* supra note 5.

[7] Although not obligated, DPMs, e–DPMs and LMMs would still be permitted to enter opening quotes even if another market maker has already entered an opening quote.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56795; File No. SR–DTC–2007–11]**

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Amend its Operational Arrangements as it Applies to Structured Securities

November 15, 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 7, 2007, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 amend DTC's Operational Arrangements as they apply to Structured Securities. DTC's Operational Arrangements is a contractual agreement between DTC, issuers, and paying agents that outlines the procedural and operational requirements for an issue to become and remain DTC eligible.

**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.[3]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed filing is to amend DTC's Operational Arrangements as it applies to Structured Securities to: extend the deadline by which paying agents of such securities must submit periodic payment rate information to DTC; effective January 1, 2008, establish an exception processing fee applied to certain Structured Securities that are unable to comply with the extended deadline; and provide that DTC track and make publicly available reports on paying agent performance as it relates to timeliness and accuracy of Structured Securities payment rate information submitted to DTC.

1. Background

A Structured Security such as a collateralized mortgage obligation or asset-backed security (''ABS'') is a bond backed by a pool of underlying financial assets. The underlying assets generally consist of receivables such as mortgages, credit card receivables, or student or other bank loans for which the timing of principal payments by the underlying obligors may be variable and unpredictable. The security may also incorporate credit enhancements or other rights that affect the amount and timing of payments to investors.

Communication of periodic payment rates of principal and interest (''P&I'') to the end investors in Structured Securities depends on application of stringent time frames for information reporting and significant interdependencies among servicers of the underlying assets, specifically trustees, custodians, paying agents on the securities, DTC, and the financial intermediaries that act on behalf of the investors. Given the complexity of structure and calculations of cash flow from the underlying assets through the issuer to the end investor and the interdependencies on timeliness and accuracy of performance throughout the chain of servicers and intermediaries, timely and accurate submission of payment rate information on Structured Securities may be difficult to achieve. As a result, payment rates typically are announced late on a significant number of issues, and the number of post-payable adjustments made to correct inaccurate payments due to inaccurate rates is higher than for any other security type. Furthermore, the volume of P&I payments for Structured Securities processed through DTC has grown rapidly in recent years and currently represents approximately 25% of all P&I payments processed through DTC. Incorrect and late payment rate reporting causes increased operations processing costs, inefficient cash management, and loss of income.

Accordingly, DTC formed a cross-industry working group to study the severity of the problem of processing Structured Securities P&I and to analyze possible solutions.[4] In its analysis, the working group studied the payment rate reporting history of various Structured Securities, noting factors such as paying agent and type of deal structure. The working group determined that extending the date by which paying agents must submit rate information to DTC would allow a greater number of Structured Securities to meet DTC's requirements and thus be eligible for DTC services. It also concluded that there is a significant subset of Structured Securities for which the paying agent may not be able to comply even with an extended time frame for delivery of payment rate information because of features inherent in the structure of the security issue. It determined these securities should be expressly identified and handled as issues that require exception processing. Finally, it concluded that paying agent rate reporting performance on all Structured Securities should be evaluated and made publicly available to participants and other relevant parties. Accordingly, DTC proposes to implement the changes set forth below.

2. Proposed Amendments to Operational Arrangements

DTC's ''Operational Arrangements Necessary for an Issue to Become and Remain Eligible for DTC Services'' (''Operational Arrangements'') governs issue eligibility for deposit at DTC and issuer and agent obligations regarding servicing of the issue thereafter. Regarding notification on issues that pay P&I periodically or that pay interest at a variable rate, the Operational Arrangements currently requires the paying agent on the security to provide payment rate information to DTC preferably five business days but no later than two business days prior to the payable date.

(i) Extending the Deadline for Reporting on Payment Detail

The majority of Structured Securities cannot adhere to the current Operational Arrangements rate reporting deadline. DTC is proposing to amend the Operational Arrangements to require that the payment notification regarding Structured Securities be provided to DTC by the paying agent preferably five business days but no later than one business day prior to the payable date. In addition, DTC will extend its current processing deadline for receipt of payment rate files from 7 p.m to 11:30 p.m. The extended deadline should allow paying agents to provide rates in a timely and accurate fashion for a majority of Structured Securities issues and should permit the securities to remain eligible for DTC's services while providing DTC adequate time to process the information without delaying payment by DTC to its participants.

(ii) Securities Classifications

Due to the complexity of certain Structured Securities, it is anticipated that certain issues will not be able to meet the amended Operational Arrangements requirement for timely payment rate reporting even with the extended reporting period. Therefore, DTC proposes to distinguish between ''conforming'' and ''non-conforming'' Structured Securities. Non-conforming

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] The group consisted of representative from the Securities Industry and Financial Markets Association (SIFMA), major paying agents, servicers and master servicers, underwriters, and major retail and institutional broker-dealers and custodians.

Structured Securities will be issues for which the issuer and paying agent have concluded that the security has features that will likely preclude the paying agent from submitting rate information to DTC in conformity with the requirements of the Operational Arrangements. The conforming/non-conforming identification will be made at the time the security is made eligible at DTC. For each Structured Securities underwriting that the issuer and paying agent identified as non-conforming, the issuer and paying agent shall submit a written attestation giving the reason for non-conformance. DTC will in turn identify non-conforming Structured Securities to participants and other relevant parties and will add an indicator to the appropriate DTC systems functions to denote non-conforming securities. Paying agents shall be required to evaluate their entire portfolio of Structured Securities on deposit at DTC to identify non-conforming securities that have previously been made eligible at DTC. Although approximately 15% of Structured Security issues currently fail to have rates submitted to DTC in a timely manner, it is estimated that approximately only half of these have structural impediments to meeting the requirements. Failures in timely rate reporting in other instances are believed to be curable by improved servicing and reporting on the securities.

(iii) Exception Processing Fee Applicable to Non-Conforming Securities

Securities processing inefficiencies and rate inaccuracies associated with late payment rate reporting lead to increased costs associated with non-conforming Structured Securities. In order to recoup the increased processing costs, DTC is proposing to impose, effective January 1, 2008, an exception processing fee to the managing underwriter of the non-conforming issue at the time of underwriting. No fee will be charged retroactively on issues already on deposit at DTC prior to the implementation of the fee.

The exception processing fee will be calculated based upon anticipated excess costs of Structured Securities P&I processing. Based on estimates derived from 2006 costs, the fee would be approximately $4,200 per CUSIP. The fee applicable for 2008 would reflect more current costs and would be modified accordingly. The amount of the fee would be presented to DTC's Board of Directors for approval and filed with the SEC as part of DTC's annual establishment of fees, and would be modified in accordance with DTC's standard procedures for fee modification.

The aggregate net amount of the exception processing fees will be allocated and rebated on a pro rata basis annually to the DTC participants for whom DTC processed Structured Securities P&I allocations. The total number of allocations would be calculated for each participant as a percentage of total annual allocations by DTC and that percentage would be applied against the total exception processing fund and rebated to each participant. The total exception processing fund would be calculated as the sum of all exception processing fees less DTC's cost to administer the program.

(iv) Evaluation and Publication of Paying Agent Performance

DTC is proposing to track and evaluate paying agent performance with regard to timeliness and accuracy of payment rate reporting on Structured Securities and to make these evaluations available to DTC participants and to the public. The purpose of these evaluations is to identify poor payment and reporting performance for which a paying agent should be able, based on its attestation, to correct any underlying servicing issues associated with the payment and information flows.

DTC plans to expand evaluation reports ( ''Report Cards'') that are currently used to compare rate submission performance and accuracy of Structured Securities paying agents. Currently the Report Cards are only distributed among the paying agents being compared. DTC is proposing to make the Report Cards available on its Web site. The Report Card tracks and reports performance for a given month by paying agent with respect to the number of collateralized mortgage obligations and asset-backed securities announcements processed, the number of late and amended announcements, the payment dollars, late payment dollars, and the number of payments and late payments. Timeliness of payment rate notification on non-conforming Structured Securities will not be included in the proposed paying agent performance evaluation based on the paying agent's attestation that it is a non-conforming issue subject to an exception processing fee. The other factors will be included with respect to both conforming and non-conforming securities.

In summary, altering the Operational Arrangements to allow paying agents additional time in which to calculate payment rates will allow more issues of Structured Securities to be eligible at DTC. Identification of issues that cannot meet the extended reporting deadlines and reporting on paying agent performance will allow the industry to anticipate processing inefficiencies associated with certain Structured Securities issues. Furthermore, imposition of an exception processing fee on Structured Securities that cannot meet the extended reporting deadlines due to deal structure will shift the expense associated with these securities to the underwriters and issuers that create the structure.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [5] and the rules and regulations thereunder because the proposed changes removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

*(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.

[5] 15 U.S.C. 78q–1.

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–2007–11 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–2007–11. 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 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/2007–11.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–2007–11 and should be submitted on or before December 11, 2007.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–22890 Filed 11–23–07; 8:45 am]

**BILLING CODE 8011–01–P**

[6] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56812; File No. SR–NYSE–2007–99]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Allow Issuers Voluntarily Delisting Index-Linked Securities To Submit to the Exchange a Letter From an Authorized Officer of the Issuer Rather Than a Board Resolution

November 19, 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 October 31, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I, II, and III below, which items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend section 806.02 of the Exchange's Listed Company Manual (''Manual'') to provide that index-linked notes currently listed on the Exchange and voluntarily withdrawing from listing to transfer to another national securities exchange, need not provide the Exchange with a board resolution authorizing such action but, in lieu thereof, must provide a letter signed by an authorized executive officer of the issuer setting forth the reasons for the proposed withdrawal. The Exchange is also deleting the rule text that applied prior to April 24, 2006. On that date, the revised text of section 806.02 became effective. The text of the proposed rule change is available at the Exchange, on the Exchange's Web site at *http://www.nyse.com*, 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 self-regulatory organization 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 proposes to amend section 806.02 of the Manual to provide that index-linked notes currently listed on the Exchange and voluntarily withdrawing from listing to transfer to another national securities exchange, need not provide the Exchange with a board resolution authorizing such action but, in lieu thereof, must provide a letter signed by an authorized executive officer of the issuer setting forth the reasons for the proposed withdrawal.

There are currently nine series of index-linked notes listed on the Exchange. Four of these securities were listed under section 703.19 of the Manual pursuant to individual rule filings under section 19(b)(2) of the Act.[3] The other five securities were listed under section 703.22 of the Manual, the Exchange's recently adopted generic listing standard for index-linked notes.

As part of its strategic business planning, NYSE Euronext, the parent company of the Exchange, is seeking to move the listing and trading of index-linked notes from the Exchange to NYSE Arca, Inc. (''NYSE Arca''), a separate self-regulatory organization owned by NYSE Euronext. As such, the Exchange does not currently plan to list any further index-linked notes on NYSE in the future. In addition, the Exchange has asked the issuers of index-linked notes currently listed on NYSE to voluntarily transfer the listing of those securities to NYSE Arca and such issuers have agreed to do so. As this transfer will require the delisting of the securities from the Exchange and there is no basis under Exchange rules for a delisting initiated by the Exchange itself, the issuers are required to voluntarily withdraw their securities from listing pursuant to section 806.02 of the Manual. Section 806.02 requires companies voluntarily withdrawing securities from listing to provide a resolution of the board of directors of the issuer authorizing such action. Each of the issuers involved has informed the Exchange that no such board

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(2).

authorization is required by their constitutive documents or the laws of their jurisdictions of incorporation. As such, they would need to obtain the resolution solely to comply with section 806.02.

As obtaining these resolutions would be burdensome for the issuers involved and the transfers of the securities to NYSE Arca are being effectuated at the request of the Exchange, NYSE believes it is appropriate to waive this requirement specifically for the nine affected securities. NYSE proposes a waiver of this requirement applicable only to the voluntary withdrawal from listing of index-linked notes that are being transferred to another national securities exchange. In lieu of the board resolution, the issuer will be required to provide a letter signed by an authorized executive officer setting forth the reasons for the proposed withdrawal. The Exchange believes that this narrowly tailored exception to the requirements of section 806.02 is justified because of the unique circumstance that the withdrawal from listing is occurring at the Exchange's request to further an NYSE Euronext business objective.

The Exchange also proposes to amend section 806.02 to delete the rule text that applied prior to April 24, 2006. On that date, the revised text of section 806.02 became effective to comply with the requirements of Rule 12d2–2 under the Act.[4] On July 14, 2005, the Commission adopted amendments to Rule 12d2–2 under the Act. Rule 12d2–2 under the Act, as amended, required all national securities exchanges, including the Exchange, to amend their delisting rules to conform with certain requirements set forth in new Rule 12d2–2. The Exchange amended section 806.02 in light of these requirements and its new delisting procedures superseded the old procedures on April 24, 2006. As such, the old procedures have no further application and, to avoid confusion, the Exchange proposes to delete them from section 806.02 in their entirety.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,[5] in general, and furthers the objectives of section 6(b)(5) of the Act,[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms 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*

Written comments were neither solicited nor 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 the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2007–99 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–2007–99. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–99 and should be submitted on or before December 17, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–22944 Filed 11–23–07; 8:45 am]

**BILLING CODE 8011–01–P**

[4] 17 CFR 240.12d2–2.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56810; File No. SR–NYSEArca–2007–117]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding a New Order Type Known as PNP Blind

November 19, 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 November 13, 2007, NYSE Arca, Inc. (''NYSE Arca'' 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

substantially prepared by the Exchange. NYSE Arca has designated the proposed rule change as ''non-controversial'' under Section 19(b)(3)(A)(iii) [3] of the Act and Rule 19b–4(f)(6) 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, through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), proposes to amend NYSE Arca Equities Rule 7.31 in order to add a new order type known as PNP Blind. The changes described in this rule proposal would add new Exchange Rule 7.31(mm). The text of the proposed rule change is available on the Exchange's Web site at *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 Arca 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. NYSE Arca 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

In order to provide additional flexibility and increased functionality to its system and its Users,[5] the Exchange proposes to add a new variation upon an existing order type. The existing order type, the PNP Order (Post No Preference),[6] is a limit order to buy or sell that is executed in whole or in part on the Exchange, with any unexecuted portion displayed and ranked in the NYSE Arca book. The proposed corollary to this order type, PNP Blind, is a PNP order that is priced at or through the Best Protected Bid or Best Protected Offer (''PBBO'') [7] and is displayed on the NYSE Arca book at the price of the contra quote. The limit price of the PNP Blind order shall be undisplayed (*e.g.*, blind).

PNP Blind

The limit price of the PNP Blind order shall remain undisplayed while its tradable price may be adjusted in certain circumstances. Where the PBBO adjusts away from the price of the PNP Blind and the prices continue to overlap, the limit price of the PNP Blind will remain undisplayed but its tradable price shall be adjusted to the contra side of the PBBO. Similarly, in instances where the PBBO moves into the price of the PNP Blind, the limit price remains undisplayed and the tradable price is adjusted to the contra side of the PBBO.

In certain circumstances, the PNP Blind order will convert to a displayed PNP limit order. Where the PBBO moves away from the price of the PNP Blind order and the prices no longer overlap, the PNP Blind will convert to a displayed PNP order and once displayed it may become the new PBBO. Once converted, the order never reverts to an undisplayed PNP Blind order.

This order type is similar in nature to an existing order type, the Passive Liquidity Order (''PLO'').[8] The PLO allows Users to post undisplayed limit orders on the NYSE Arca book, which do not route to away market centers. However, the PLO is exclusive to Lead Market Makers in issues where the Exchange is the primary listings market and there is a Lead Market Maker. PNP Blind orders are available to all Users for all securities and never route to away market centers. Unlike the PLO which remains undisplayed, the PNP Blind will convert to a displayed limit order under the circumstances described above.

PNP Blind orders, therefore, will offer all Users the ability to post an undisplayed limit order priced at or through the PBBO, with a tradable price set at the contra side of the PBBO. The tradable price will adjust until such time as the PBBO either moves away from the limit price of the PNP Blind order and the prices no longer overlap, or moves into the price of the PNP Blind order, whereupon it will then convert to a displayed PNP order. The entry time of a PNP Blind order is not refreshed or updated with each adjustment to its price.[9]

PNP Blind Examples

The following examples demonstrate how a PNP Blind order operates.

Example 1:

If the price of the PNP Blind order is at or through a protected quote, the order will go blind (undisplayed) and will be placed on the book at the price of the contra quote of the PBBO.

*PBBO:* 15.00 to 15.05.
*PNP Blind:* Buy 1000 @ 15.10.
*Result:* PNP Blind goes blind (undisplayed) and is placed on the bid side of the book at 15.05.

Example 2:

If the PBBO moves away from the price of the PNP Blind, but the prices continue to overlap, the PNP Blind remains undisplayed and adjusts its tradable price on the book to the new price of the contra quote of the PBBO.

*PBBO:* 15.00 to 15.05.
*PNP Blind:* Buy 1000 @ 15.10.
*Result:* PNP B goes blind (undisplayed) and is placed on the bid side of the book at 15.05.
*PBO:* Updates from 15.05 to 15.07.
*Result:* PNP Blind remains blind (undisplayed) but adjusts in price to 15.07.

Example 3:

If the PBBO moves away from the price of the PNP Blind and the prices no longer overlap, the PNP Blind converts to a displayed PNP limit order.

*PBBO:* 15.05 to 15.07.
*PNP Blind:* Buy 1000 @ 15.10.
*Result:* PNP B goes blind (undisplayed) and is placed on the bid side of the book at 15.07.
*PBO:* Updates from 15.07 to 15.15.
*Result:* PNP Blind converts to PNP limit order and displays a bid of 15.10, setting an updated PBBO of 15.10 to 15.15.

Example 4:

If the PBBO moves into the price of the PNP Blind, the PNP Blind will adjust its tradable price on the book to the new price of the contra quote of the PBBO or remains displayed if it never went blind or had previously converted to a PNP limit order.

*PBBO:* 15.00 to 15.05.
*PNP Blind:* Buy 1000 @ 15.10.
*Result:* PNP Blind goes blind (undisplayed) and is placed on the bid side of the book at 15.05.
*PBBO:* Updates to 15.00 to 15.03.
*Result:* PNP Blind remains blind (undisplayed) and its tradeable price adjusts to 15.03.
*PBBO:* 15.00 to 15.05.
*PNP Blind:* Buy 1000 @ 15.03.
*Result:* PNP Blind is displayed at 15.03.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* NYSE Arca Equities Rule 1.1(yy) for the definition of ''User.''

[6] *See* NYSE Arca Equities Rule 7.31(w).

[7] Pursuant to NYSE Arca Equities Rule 1.1(dd), the term ''NBBO'' refers to the National best bid or offer and the term ''PBBO'' refers to the Best Protected Bid and the Best Protected Offer on NYSE Arca. PNP Blind orders will be priced in relation to the PBBO and orders placed on NYSE Arca cannot trade-through Protected Quotations on away markets except as allowed under NYSE Arca Equities Rule 7.37(g).

[8] *See* NYSE Arca Equities Rule 7.3(h)(4).

[9] If a PNP Blind order reaches its limit price and becomes displayed, such PNP Blind order would become the only displayed order in the NYSE Arca book at that price.

*Update:* PBBO resets to 15.03 to 15.05.
*Result:* PNP Blind remains displayed at 15.03.

Display Order Process

PNP Blind orders fall within the Exchange's Display Order Process set forth in NYSE Arca Equities Rule 7.36. Accordingly, as described above, PNP Blind orders follow a strict price/time priority.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] 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 for 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.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13] As required under Rule 19b–4(f)(6)(iii),[14] NYSE Arca 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.[15] However, Rule 19b–4(f)(6)(iii)[16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Arca requests that the Commission waive the 30-day operative delay period for ''non-controversial'' proposals under Rule 19b–4(f)(6)[17] and make the proposed 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 it would permit the Exchange to offer the PNP Blind order type without delay. Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2007–117 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–2007–117. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. 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–2007–117 and should be submitted on or before December 17, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–22898 Filed 11–23–07; 8:45 am]

**BILLING CODE 8011–01–P**

[10] 15 U.S.C. 78f(b).
[11] 15 U.S.C. 78f(b)(5).
[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] *Id.*
[16] *Id.*
[17] *Id.*
[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f)
[19] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–56800; File No. SR–OCC–2007–10]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Fees Charged to Clearing Members and Non-Clearing Members for Theoretical Profit and Loss Values

November 16, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on

[1] 15 U.S.C. 78s(b)(1).

September 18, 2007, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. 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 principal purpose of the rule change is to effect changes to the fees charged to clearing members and non-clearing members for Theoretical Profit and Loss Values.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of this rule change is to: (i) Eliminate the fee charged to clearing members for Theoretical Profit and Loss Values and provide this information at no additional cost as part of the ancillary services offered to Tier I clearing members, and (ii) reduce the maximum fee charged to non-clearing members for such information. As a result of these changes in fees and service offerings, conforming changes are required in OCC's Schedule of Fees as well as in the Supplement to the Agreement for OCC Services: Ancillary Services. In addition, a new Supplement to the Agreement for OCC Services is being adopted to reflect that Theoretical Profit and Loss Values are now being provided to clearing members as part of OCC's ancillary service offerings.

*A. Background*

OCC currently provides a theoretical profit/loss value file (''data'') to OCC clearing members and non-clearing member broker-dealers for use in calculating (i) risk-based haircuts in order to determine SEC net capital requirements and (ii) margin for customer positions on a portfolio basis. Currently, the data is made available for download to OCC clearing members and non-clearing members by either (i) mainframe to mainframe transmission, (ii) File Transfer Protocol (''FTP''),[3] or (iii) OCC's Theoretical Information Online (''TIO'') system.[4] Both the mainframe to mainframe transmission and the FTP processes provide for receipt of the full theoretical file while TIO also allows partial file downloads.

*B. Discussion*

TIO once served as a practical and economical tool that allowed users to avoid downloading the entire theoretical file to access the desired information. The TIO ''per class group'' charge enabled clearing members and non-clearing members that needed data for a relatively small subset of all equity classes to save money by using TIO as compared to the other two means of downloading the data. However, the widespread availability of affordable broadband network services has practically eliminated the download time and other bandwidth-related concerns associated with downloading an entire file of theoretical values. Meanwhile, as more subscribers begin to use the customer margin risk arrays for customer positions margined on a portfolio basis, OCC believes the number of clearing members and non-clearing members that would benefit from having the option to download a partial file will continue to decline.

1. Elimination or Reduction of Fees

In May 2007, OCC's Board of Directors authorized a plan to decommission the TIO system due to its limited value and high maintenance cost. The data will remain available to clearing members and non-clearing members as a full file through either a mainframe to mainframe transmission or FTP.[5] Effective October 1, 2007, OCC will eliminate the fee for Theoretical Profit and Loss Values charged to clearing members that receive the data via mainframe to mainframe or via FTP and will provide this information as part of the ancillary services offered to Tier I clearing members.[6] Also effective October 1, 2007, OCC will reduce the fee for non-clearing members to receive the data via mainframe to mainframe transmission or FTP to a flat rate of $1,000.00 per month.[7] OCC attached as Exhibit 5A to SR–OCC–2007–10 a Schedule of Fees as of October 1, 2007, which reflects the foregoing changes.[8]

2. Conforming Changes

As part of the proposed rule change, OCC is also making certain additional conforming changes to both its Schedule of Fees and its Ancillary Services Supplement, a copy of which is attached to SR–OCC–2007–10 as Exhibit 5B, to reflect recent modifications to its ancillary service descriptions. Specifically, as of April 2007, OCC no longer provides monthly core reports to clearing members via cd-rom as currently referenced in Tiers I, II, III, and IV of the Schedule of Fees and the Ancillary Services Supplement. Instead, clearing members now have access to historical core reports on-line through ENCORE Core Reports. In addition, OCC's special settlement file and adjusted position file as currently referenced in Tier 1 of the Schedule of Fees and the Ancillary Services Supplement are no longer separately produced for clearing members as this information is now made available as part of OCC's data distribution service (''DDS''). Finally, OCC has now completed its conversion of DDS subscribers to its new format as previously described in File No. SR–

[2] The Commission has modified parts of these statements.

[3] OCC charges $2,000.00 per month for clearing members and non-clearing members to access the Data via mainframe to mainframe transmission or FTP.

[4] OCC currently charges a monthly fee of $0.10 per class group with a minimum monthly charge of $200.00 and a maximum monthly charge of $2,000.00 for clearing members and non-clearing members accessing the data via TIO.

[5] OCC staff will work with affected TIO subscribers to assist them in their transition to FTP or mainframe to mainframe downloads by December 31, 2007.

[6] There are a total of five clearing members that subscribe to OCC's theoretical data that are not Tier I subscribers. Based upon July 2007 billing for June activity, the increased monthly cost of subscribing to Tier I ($450.00) would be more than offset for one of these clearing members by elimination of the separate charge for theoretical data ($2,000.00 per month). The other four clearing members will have a monthly billing increase of approximately $250. These four clearing members currently use TIO and on average download a minimal number of class groups per month.

[7] OCC will continue to support and make the data available through TIO until December 31, 2007. Clearing members and non-clearing members that continue to receive data via TIO after October 1, 2007, will be charged the current TIO fees for the data. However, effective January 1, 2008, TIO will be decommissioned, and the data will no longer be available via TIO. As a result, the TIO fee will then be eliminated from the Schedule of Fees.

[8] Exhibit 5A also contains references highlighting the phase-out approach that OCC is adopting with respect to the decommissioning of TIO and the impact to fees charged to clearing members and non-clearing members during this time period. Such notations will no longer be applicable after TIO is retired, and they will be eliminated in connection with the republication of the January, 2008 schedule of fees.

OCC–2006–06.[9] Therefore, the surcharge currently referenced in OCC's Schedule of Fees in connection with the DDS conversion is no longer applicable and will be removed along with each of the other above-described items.

3. Supplement to Agreement for OCC Services: Theoretical Profit and Loss Values

Exhibit 5C to SR–OCC–2007–10 is the Supplement to the Agreement for OCC Services: Theoretical Profit and Loss Values to be entered into between OCC and clearing members subscribing to Theoretical Profit and Loss Values (''Supplement'').[10] The Supplement is structured to fit within OCC's existing framework for the Agreement for OCC Services and will replace the current form agreement between clearing members and OCC. The provisions are generally self-explanatory, and they are intended to describe the respective responsibilities of OCC and the subscribing clearing member. Section 1 describes the Theoretical Profit and Loss Values and identifies the available means of downloading the data. Sections 2 and 3 set forth the authorized scope of use of the data and related documentation. Section 4 describes the clearing member's obligations with respect to security and access codes. Section 5 describes the fees associated with the data. Section 6 sets forth the confidential nature of the data and documentation. Sections 7 through 11 set forth further responsibilities of the parties including warranties, liability, and indemnification. Section 12 describes the termination rights of the parties. Section 13 contains general terms regarding survival of certain provisions. Exhibit A to the Supplement is the form of acknowledgment to be signed by a managed clearing member.

The proposed rule change is consistent with Section 17A of the Act because it involves a fee, due, or charge applicable to subscribers of information that provides for a reasonable allocation of costs. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.

[9] Securities and Exchange Act No. 54059 (June 28, 2006), 71 FR 38962 (July 10, 2006).

[10] Non-clearing members will also be required to execute a corresponding subscription agreement for the data.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule change changes fees charged by OCC, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [11] and Rule 19b–4(f)(2) [12] thereunder. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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–OCC–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–OCC–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 communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC. 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–OCC–2007–10 and should be submitted on or before December 17, 2007.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–22910 Filed 11–23–07; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Senior Executive Service: Performance Review Board Members

**AGENCY:** Small Business Administration.

**ACTION:** Notice of members for the FY 07 Performance Review Board.

**SUMMARY:** Section 4314(c)(4) of Title 5, U.S.C.; requires each agency to publish notification of the appointment of individuals who may serve as members of that Agency's Performance Review Board (PRB). The following individuals have been designated to serve on the FY 07 Performance Review Board for the U.S. Small Business Administration:

1. Frank R. Borchert, III, Chair, General Counsel.
2. Darryl K. Hairston, Deputy Associate Administrator for Management and Administration.
3. Grady B. Hedgespeth, Director of Financial Assistance.
4. Luz A. Hopewell, Director of International Trade.
5. Herbert L. Mitchell, Associate Administrator for Disaster Assistance.
6. Anoop Prakash, Associate Administrator for Entrepreneurial Development.

7. Sean G. Rushton, Assistant Administrator for Communication and Public Liaison.

Dated: November 16, 2007.

**Steven C. Preston,**

*Administrator.*

[FR Doc. E7–22947 Filed 11–23–07; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Seventy-Fourth Meeting: RTCA Special Committee 159: Global Positioning System (GPS)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 159 meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Global Positioning System.

**DATES:** The meeting will be held December 4–7, 2007, from 9 a.m. to 4:30 p.m. (unless stated otherwise).

**ADDRESSES:** The meeting will be held at RTCA, Inc. 1828 L Street, NW., Suite 805, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix 2), notice is hereby given for a Special Committee 159 meeting. **Note:** Specific working group sessions will be held December 4–7, 2007. The plenary agenda will include:

- December 4:
  - All Day, Working Group 6, GPS/Interface, ARINC Room.
- December 5:
  - All Day, Working Group 6, GPS/Interface, ARINC Room.
- December 6:
  - All Day Working Group 6, GPS/Interface, ARINC Room.
- December 7:
  - Opening Plenary Session (Chairman's Remarks, Introductions).
  - Approval of Summary of the Seventy-Third Meeting Held September 21, 2007 RTCA Paper No. 274–07/SCI59–954.
  - Consider for Approval—Revised DO–235A–Assessment of Radio Frequency Interface Relevant to the GNSS, RTCA Paper No. 261–07/SCI59–953.
  - Review/Approval—Velocity Accuracy, Figure of Merit and Associated Test Text—GRAS MOPS.
  - Closing Plenary Session (Assignment/Review of Future Work, Other Business, Date and Place of Next Meeting).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the FOR FURTHER INFORMATION CONTACT section. Members of the public may present a written statement to the committee at any time.

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

**Francisco Estrada C.,**

*RTCA Advisory Committee.*

[FR Doc. 07–5803 Filed 11–23–07; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA Special Committee 147 Sixty-Sixth Plenary: Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment/Fourth Meeting of Working Group 75

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 147 meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 147: Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment and Working Group 75.

**DATES:** The meeting will be held December 11–13, 2007 from 9 a.m.–5 p.m.

**ADDRESSES:** The meeting will be held at EUROCONTROL Headquarters Brussels, Belgium.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web-site *http://ww.rtca.org.* POC: Mr. John Law, +32 (0) 2 729 3766, *john.law@eurocontrol.int.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 147 meeting and Working Group 75. The agenda will include:

- December 11–13:
  - Opening Plenary Session: (Welcome and Introductory Remarks, Review/Approval of minutes from 65th SC–147 meeting, Review Agenda).
  - Briefing of FAA TCAS Program Office Activities:
  - Analysis of New York AVSA/LOLO data.
  - FAA Ops Workshop Results.
  - Other Program Office activities and plans.
  - EUROCONTROL TCAS II Program Office Activities.
  - SC–147/WG 75 Activity Reports.
  - WG 75 Validation Report.
  - RWG report on current status of Draft DO–185B and proposed changes.
  - Consideration of Final Draft of TCAS MOPS–DO–185B.
  - Content discussion.
  - FRAC and MOPS approval schedule.
  - Closing Session (Other Business, Future Actions/Activities, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 16, 2007.

**Francisco Estrada C.,**

*RTCA Advisory Committee.*

[FR Doc. 07–5804 Filed 11–23–07; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA Special Committee 205/EUROCAE Working Group 71: Software Considerations in Aeronautical Systems Seventh Joint Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 205/EUROCAE Working Group 71 meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 205/EUROCAE Working Group 71: Software Considerations in Aeronautical Systems.

**DATES:** The meeting will be held January 14–18, 2008, from 8:30 a.m.–5 p.m. (variable—see daily schedule).

**ADDRESSES:** The meeting will be held at Sheraton Wall Centre, 1088 Burrard Street, Vancouver, British Columbia, Canada, V62ZR9.

**FOR FURTHER INFORMATION CONTACT:** (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org;* (2) Joint Secretaries, Europe: Mr. Ross Hannon, telephone +44 78807–46650, e-mail: *ross_hannon@binternet.com;* US: Mr. Michael DeWalt, telephone (206) 972–0170, e-mail: *mike.dewalt@certification.com.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 205/EUROCAE Working Group 71 meeting.

**Note:** On Arrival: A valid passport is required for entry into Canada, including U.S. Citizens. On arrival at the Sheraton Wall Centre, please have photo identification available (either a passport, a driver's license bearing a photograph or an identity card) to assist in your pass being issued.

- January 14:
  - Registration.
  - New Attendees Introductory Session.
  - Sub-Group Meetings.
  - Cast Meetings (Closed).
  - Executive Committee and SG Chairs/Secretaries Meeting.
- January 15:
  - Plenary: Chairman's Introductory Remarks and Introductions.
  - Review of Meetings Agenda and Agreement of Previous Minutes.
  - Issue List Status Report.
  - Sub-Groups Report In and Q&A Session.
  - Liaison Reports: CAST; WG–63/SAE S–18: Revision of SAE ARP 4754 & ARP 4761; SC–203; SC–216.
  - Text Development, Submittal & Approval Process Review.
  - Sub-Group Meetings.
  - Executive Committee and SG Chairs/Secretaries Meeting.
- January 16:
  - Plenary Text Approval.
  - Sub-Group Meetings Commence Immediately after Plenary.
  - CAST Meeting (Closed).
  - Executive Committee and SG Chairs/Secretaries Meetings.
- January 17:
  - Plenary.
  - Sub-Group Meetings.
  - Sub-Group Meetings or Mandatory Paper Reading Session.
  - Executive Committee and SG Chairs/Secretaries Meetings.
- January 18:
  - Chairman's Introductory Remarks
  - Plenary Text Approval.
  - Sub-Groups Report Out.
  - SG3: Tool Qualification Sub-Group.
  - Closing Plenary Session (Other Business, Schedule Meeting, Closing Remarks, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may resent oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 16, 2007.

**Francisco Estrada C.,**

*RTCA Advisory Committee.*

[FR Doc. 07–5805 Filed 11–23–07; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2007–0030]**

### Agency Information Collection Activities; Request for Comment; Revision of an Information Collection: Hours of Service (HOS) of Drivers Regulations, Supporting Documents

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plans to submit the Information Collection Request described below to the Office of Management and Budget (OMB) for review and approval, and invites public comment. The FMCSA invites comments on its plan to request OMB approval to revise an existing information collection (IC) entitled, ''Hours of Service of Drivers Regulations,'' OMB Control Number 2126–0001. The Agency has updated its calculation of the paperwork burden of the hours of service (HOS) rules to reflect changes in the number of commercial motor vehicle (CMV) drivers, and to clarify the burden associated with supporting documents. The Agency requires most CMV drivers to complete and maintain a record of duty status (RODS), commonly referred to as a logbook, reflecting details of changes in duty status during each 24-hour period. Drivers retain the RODS for a minimum period and then forward them, along with supporting documents (e.g., fuel receipts, road toll tickets), to the motor carrier. The motor carrier uses the supporting documents to assist in reviewing the RODS for accuracy, and retains the RODS and supporting documents for a minimum of 6 months. This IC promotes safety in the operations of motor carriers of property and passengers by assisting the carrier and enforcement officials in ensuring compliance with the HOS rules that ensure drivers are provided adequate opportunities for rest.

**DATES:** Comments must be submitted on or before January 25, 2008.

**ADDRESSES:** You may submit comments, identified by DOT Docket ID Number 0030, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251

*Privacy Act:* Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division. *Telephone:* 202–366–4325. *E-mail: MCPSD@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The FMCSA regulates the amount of time a driver may drive and be on duty. A CMV driver must keep a

record of duty status (RODS), commonly referred to as a logbook, that indicates his or her duty status (driving, on duty not driving, off duty, sleeper berth) for all periods of the duty day. The RODS must be maintained on the CMV for 7 days, and subsequently submitted to the motor carrier along with any ''supporting documents,'' such as fuel receipts and toll tickets, that could assist in verifying the accuracy of entries on the RODS. The motor carrier must retain the RODS and supporting documents for a minimum of 6 months from date of receipt.

Statutory authority for regulating the hours of service (HOS) of drivers operating CMVs in interstate commerce is derived from 49 U.S.C. 31136 and 31502. The penalty provisions are located at 49 U.S.C. 521, 522 and 526, as amended. On November 28, 1982, the Federal Highway Administration (FHWA), the agency previously responsible for administration of the Federal Motor Carrier Safety Regulations (49 CFR 350 *et seq.*)(FMCSRs) promulgated a final rule that required a motor carrier to verify the accuracy of the HOS of each driver and to ensure that drivers record their duty status in a specified format (47 FR 53383). The rule as amended is codified at 49 CFR 395.8. The FMCSRs also state that:

> No driver shall operate a commercial motor vehicle, and a commercial motor carrier shall not require or permit a driver to operate a commercial motor vehicle, while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the commercial motor vehicle (49 CFR 392.3).

The rule provides three methods of recording driver HOS:

(1) *Paper RODS:* This grid form requires the driver to graph time and location on a paper record over a 24-hour period (Section 395.8(g)). It must be present on the CMV in the absence of a regulatory exception.

(2) *Automatic On-Board Recording Device (AOBRD):* An electronic record is permitted if it is created and maintained by an AOBRD as defined by 49 CFR 395.15. The record must include all the information that would appear on a paper log, and the driver or carrier must be capable of producing this information upon demand.

(3) *Time Record:* The HOS regulations allow certain ''short haul'' CMV drivers to record their hours of service by means of a time record, commonly referred to as a time card, maintained at the place of business (Section 395.1(e)). The regulations do not require that these records reflect each change of duty status, but they must show for each day: the time a driver begins work, the time the driver is released from work, and the total hours worked. There are two categories of CMV operators eligible for the exception: (1) Drivers operating certain lightweight CMVs over short distances, and (2) drivers operating within a 100 air-mile radius of the normal work reporting location and returning to that location for release from duty within 12 hours of going on duty.

The RODS is an important tool because it provides the information the carrier and enforcement personnel require to determine the compliance of a driver with the HOS rules. The adherence of drivers and motor carriers to the HOS requirements helps FMCSA protect the public by reducing the number of tired CMV drivers on the highways.

Most States receive grants from FMCSA under the Motor Carrier Safety Assistance Program. As a condition of receiving these grants, States agree to adopt and enforce the FMCSRs, including the HOS rules, as State law. As a result, State enforcement inspectors use the RODS and supporting documents to determine whether CMV drivers, in interstate or intrastate commerce, are complying with the HOS rules.

In addition, FMCSA uses the RODS during on-site compliance reviews (CRs) of motor carriers. The CR determines the overall safety rating of a motor carrier, and a negative review can be damaging to a motor carrier's CMV operations because the results of CRs are public information. Many shippers of property use the results of these CRs, as well as other records of a motor carrier's crash and violation history, in selecting a motor carrier to transport their freight. Finally, the RODS have traditionally been the principal document accepted by the judicial system as evidence to support actions for violations of the HOS regulations. This information collection supports the DOT's Strategic Goal of Safety because the information helps the Agency ensure the safe operation of CMVs in interstate commerce on our Nation's highways.

On August 26, 1994, Congress directed FHWA to revise the HOS rules to improve both driver and motor carrier compliance and the effectiveness of HOS enforcement, at a cost reasonable to the motor carrier industry (The Hazardous Materials Transportation Authorization Act of 1994 (HMTAA) (Pub. L. 103–311, 108 Stat. 1673)). Section 113(b) of the HMTAA directs the Agency to specify the number, type, and frequency of supporting documents that must be maintained as well as the ''identification items'' that must appear on the documents. The regulation in place at that time remains in effect today: ''Each motor carrier shall maintain records of duty status and all supporting documents for each driver it employs for a period of six months from the date of receipt'' (49 CFR 395.8(k)).

On April 20, 1998, FHWA proposed a new rule for supporting documents (63 FR 19457). As the successor agency to FHWA for motor carrier responsibilities, FMCSA on May 2, 2000, proposed additional regulatory language to clarify the rules (65 FR 25540). The Agency considered the comments it received from the public on each proposal. On November 3, 2004, FMCSA published a Supplemental NPRM (SNPRM), proposing further clarification of the duties of motor carriers and drivers with respect to supporting documents (69 FR 63997). The SNPRM addressed how a motor carrier could systematically monitor the RODS of its CMV drivers, and discussed the use of supporting documents by the Agency in enforcing the HOS. The principal method for motor carriers to ensure the compliance of their CMV drivers with the HOS rules was a ''self-monitoring system'' employing supporting documents. The SNPRM contained a list of documents that might serve as supporting documents for a motor carrier's self-monitoring system.

The Agency received 197 public comments on the SNPRM, as well as public comment on all the proposals mentioned above. Some comments indicated that the burden of the paperwork associated with the supporting documents is greater than the estimates provided by FMCSA in accordance with the Paperwork Reduction Act. FMCSA reevaluated its analysis of the rule as required by the PRA. The Agency discovered that the PRA analysis proposed for this rule, did not account for the supporting document collection and retention burdens associated with the existing driver RODS information collection requirements.

In this Information Collection (IC) revision, FMCSA proposes an increase in the number of CMV drivers affected by the HOS regulations. This accounts for an increase in the total number of CMV operators on the highways today, as compared to 2005 when OMB last approved this information collection. The total number of interstate and intrastate CMV drivers is currently estimated to be 7.0 million. Of these, 4.6 million are required to complete RODS and furnish supporting documents. The remainder are ''short haul'' drivers or

others who are exempt from the RODS requirement.

The FMCSA also describes its calculation of the HOS paperwork burden with greater specificity. To do so, the Agency has reorganized its breakdown of the various paperwork tasks performed by drivers and motor carriers. The revised organization separates the paperwork burdens imposed by the RODS requirements from those imposed by the supporting document requirements.

By this notice, the Agency seeks public comment on its revised calculations of the paperwork burden of the HOS rules.

*Title:* Hours of Service (HOS) of Drivers Regulations, Supporting Documents.

*OMB Control Number:* 2126–0001.

*Type of Request:* Revision of a currently-approved information collection.

*Respondents:* Motor carriers, drivers of CMVs.

*Estimated Number of Respondents:*

*Drivers:* Approximately 4.6 million;

*Active Motor Carriers:* Approximately 700,000.

*Estimated Time per Response:* The driver will take an average of 6.5 minutes to fill out a RODS, and 5 minutes to forward the completed RODS to the employing motor carrier. The motor carrier takes an average of 2 minutes to review a RODS, 1 minute per day to maintain a RODS, and 1 minute per day to maintain the supporting documents of one RODS.

*Expiration Date:* 11/30/2008.

*Frequency of Response:*

*Drivers:* 240 days per year, on average.

*Motor Carriers:* 240 days per year, on average.

*Total Number of Annual Responses Expected:*

A. DRIVER

(1) Filling Out the RODS: 1,104,000,000 (4.6 million drivers × 240 days);

(2) Forwarding the RODS to the Motor Carrier: 115 million (4.6 million drivers × 25 times per year) and

(3) Forwarding the Supporting Documents to the Motor Carrier: 0 (the activity is usual and customary).

B. MOTOR CARRIER

(1) Reviewing the RODS: 552 million (2.3 million RODS reviewed daily × 240 days);

(2) Maintaining the RODS: 1,104,000,000 (4.6 million drivers × 240 days); and

(3) Maintaining the Supporting Documents: 1,104,000,000 (4.6 million drivers × 240 days).

*Estimated Total Annual Burden:* 184,380,000 hours [driver burden of 129,180,000 hours and motor carrier burden of 55,200,000 hours].

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: November 15, 2007.

**Terry Shelton,**

*Associate Administrator for Research and Information Technology.*

[FR Doc. E7–22879 Filed 11–23–07; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2007–0056]**

### Hours of Service of Drivers: Dart Transit Company Application for Exemption

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA has received from Dart Transit Company (Dart) an application for an exemption from certain commercial motor vehicle driver hours-of-service provisions of the Federal Motor Carrier Safety Regulations. Dart requests an exemption for 200 of its owner-operators from the prohibition against driving after the 14th hour of coming on-duty, following 10 consecutive hours off-duty, and the requirement that drivers using two sleeper-berth periods to accumulate the equivalent of 10 consecutive hours off-duty spend at least 8 but less than 10 consecutive hours in the sleeper-berth during one of those two periods. As requested by Dart, exempt drivers would be allowed to drive up to 11 hours within a 24-hour period between 3 a.m. one day and 3 a.m. the next day, be required to complete a minimum of 6 consecutive off-duty or sleeper-berth hours between 9 p.m. and 9 a.m., and complete additional periods of off-duty or sleeper-berth time to total at least 10 hours of rest within any ''floating'' 24-hour period. Dart would implement a detailed, performance-based Fatigue Risk Management System to help prevent overall driver fatigue, and require the use of Electronic On-Board Recorders. Dart believes the terms and conditions of the exemption would ensure that the level of safety will be equivalent to or greater than the level of safety that would be obtained absent the exemption. FMCSA requests public comment on Dart's application for exemption.

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

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA–2007–0056 by any of the following methods:

- *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to the ground floor, room W12–140, DOT Building, New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.regulations.gov.*

*Public participation:* The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Bus and Truck Standards and Operations; *Telephone:* 202–366–4325. *E-mail: MCPSD@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from motor carrier safety regulations. Under its regulations, the Federal Motor Carrier Safety Administration (FMCSA) must publish a notice of each exemption application in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the conducting of any safety analyses. The Agency must also provide an opportunity for public comment on the application.

The Agency then reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for denying or, in the alternative, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

## Application for Exemption

Dart Transit Company (Dart) is a for-hire motor carrier headquartered in Eagan, Minnesota. Dart and its affiliated companies have provided truckload service throughout the United States and Canada for over 70 years. It employs over 2,500 owner-operators with nearly the same number of power units.

Dart requested an exemption to allow 200 long-haul and regional independent owner-operators—whom they refer to as ''Exempt Operators'' (EOs)—to be exempt from certain hours-of-service (HOS) provisions in 49 CFR part 395 of the Federal Motor Carrier Safety Regulations. There would be turnover within the exempt group of drivers; therefore, the exemption request is not for 200 specific drivers, but for a pool of up to 200 EOs to participate at any given time. None of these EOs would operate as team drivers.

Dart states that its exemption request is based on the results of a fatigue-risk assessment of its operation, which indicated that the current HOS ''14-hour rule'' and sleeper-berth (S/B) provisions interfere with Dart drivers'' ability to obtain good-quality nocturnal sleep. Dart acknowledges that provisions of its exemption request ''* * * may not be acceptable or feasible for other trucking companies.'' Dart is specifically requesting an exemption from the following:

- The ''14-hour rule'' [49 CFR 395.3(a)(2)] which prohibits drivers of property-carrying commercial motor vehicles (CMVs) from driving after the 14th hour after coming on duty. Under the exemption, Dart would restrict its EOs to no more than 11 hours of driving time between 3 a.m. of one day and 3 a.m. the following day; drivers would not be required to complete the driving time within 14 consecutive hours of the time they begin work.
- The S/B provision [49 CFR 395.1(g)(1)(ii)(A)(1) and (2)] requires drivers of property-carrying CMVs to have a period of at least 8 but less than 10 consecutive hours in a S/B, and a separate period of at least 2 but less than 10 consecutive hours either in the S/B, off duty, or any combination thereof if they are using an S/B to accumulate the equivalent of 10 consecutive hours off duty. Dart's exemption request would not require EOs to use an S/B, but would require them to spend a minimum of 6 consecutive off-duty or S/B hours between 9 p.m. of one day and 9 a.m. of the following day, rather than requiring 10 consecutive hours of off-duty time with the time of day unspecified. Dart notes in its exemption application that the 6-hour ''nocturnal rest rule'' is a minimum requirement, as drivers will often sleep 7–8 hours, especially when the core sleep requirement is at the preferred circadian phase.
- Dart's EOs would be required to take additional periods, either off duty or in the S/B, at times most conducive to getting a good-quality nap or sleep during their rest breaks, so that they would have a total of at least 10 hours of opportunity for rest during any consecutive 24-hour period. This 24-hour period would not be on a midnight to midnight or other specified cycle—it could be for any 24 consecutive-hour time period (i.e., it may be referred to as a ''floating'' 24-hour period).

Briefly summarized, the ''key'' provisions of the Dart exemption application request are as follows:

- The EO will have a minimum of 10 total hours of off-duty time for any ''floating'' 24-hour period.
- The EO will be limited to a maximum of 11 hours of driving time in the 24-hour period from 3 a.m. one day to 3 a.m. the following day.
- The EO will not have to complete his or her 11 hours of driving time within 14 consecutive hours of coming on-duty.
- The EO will be required to take a minimum off-duty period of at least 6 consecutive hours between 9 p.m. one day to 9 a.m. the following day. This 6-hour minimum period could be spent off-duty, in the S/B, or any combination of both.

Dart states that while operating under the current HOS rules, it has found that the two specific rule provisions—the ''14-hour rule'' and ''split S/B rule''—frequently interfere with the ability of its over-the-road drivers to obtain good-quality sleep and deliver shipments in a safe and timely fashion. It believes the requirement to not drive after the 14th hour of coming on-duty on many occasions ''penalizes'' drivers who stop to take a nap or a sleep period of less than 8 hours, even if this is at night and it is the most sensible thing, according to Dart, to do to reduce the fatigue risk. Dart believes that drivers are given an ''unwise incentive'' under the current rules to continue driving because any time spent sleeping after coming on duty counts against their 14-hour duty period—except a minimum of at least 8 hours in the S/B—and may prevent them from delivering their shipment on schedule.

Dart says that the current split S/B rule encourages drivers who have been on duty at night to attempt to obtain all or most of their sleep during the daytime hours when they are least likely to obtain good-quality or long-duration sleep. Dart believes that not only does strict compliance with these two provisions interfere with sleep planning, but also has an effect on which shipments a driver can deliver in a timely fashion.

For more details on Dart's request, a copy of their exemption application is included in the docket identified at the beginning of this notice. The application contains details on actual business trip scenarios and other relevant information in support of the application. Copies of all scientific reports and documents submitted by Dart in support of its application for an exemption are also included in the docket for this notice.

Dart states that to provide a superior level of safety, it will implement a program referred to as its Fatigue Risk Management System (FRMS), which is an integral part of Dart's safety management system that ensures that the risks of driver loss of alertness, inattention and chronic fatigue are minimized using scientifically validated methods. Every participating driver would be subject to monitoring and correcting his or her fatigue risk using this model, and there would be advanced fatigue mitigation education for every exempt driver and the fleet managers, sleep disorder screening, and the reporting of all qualifying safety events to FMCSA. The purpose of the FRMS is to provide a protective environment around the EOs that will ensure there are no risks as the restrictions provided by the ''14-hour rule'' and ''split S/B rule'' would be withdrawn.

Dart's FRMS would include the following four core elements:

- A system for duty-rest scheduling which provides for improved sleep opportunities when compared to the current regulations.
- A comprehensive education program for EOs and managers that would educate, test, and certify them for comprehension in the following areas: (1) Basic sleep and fatigue physiology; (2) managing an alert trucking lifestyle; (3) rules of the exemption, including electronic logging; and (4) fatigue risk scores and how to improve the score.
- A set of standards for the EO's work and sleep environment; and
- Procedures to screen for fitness for duty related to sleep disorders.

Dart's four core components of fatigue risk management are supported by a management structure that provides for the following:

- Oversight of the FRMS by a Dart Fatigue Risk Management Steering Committee.
- A Fatigue Risk Management Policy that provides a comprehensive set of guidelines for promoting the alertness, sleep and health of the EOs.
- A daily process of monitoring and measuring fatigue risk and the safety of the EOs, which would include electronic on-board recorders (EOBRs) on all units using the exemption.
- The daily analysis of driver fatigue risk using commercial fatigue-risk software.
- The daily transmission of a ''fatigue risk score'' transmitted to each EO and fleet manager.
- The regular assessment of progress in minimizing fatigue-risk scores.
- Safety records maintenance.
- Monthly reporting of fatigue risk management and safety performance to the FMCSA.

Conversely, Dart believes that the potential impacts of not obtaining the exemption include the following:

- The ability to improve the alertness and safety of its drivers would be greatly limited because implementing the minimum 6 hours of continuous nocturnal rest without the ''14 hour clock'' exemption would make the recruitment of safe drivers unfeasible, and the satisfaction of customer delivery requirements impossible;
- The company would be unlikely to consider the introduction of EOBRs because it would be difficult to recruit quality owner-operators if it required EOs to install and be monitored by EOBRs;
- Dart's drivers would on occasion find it economically disadvantageous to stop for a required 6 overnight hours, and therefore have to operate without sleep overnight and risk impaired sleep during daytime rest in order to comply with the current HOS rules; and
- Dart would not be able to accept certain shipments, which could be safely delivered by alert drivers, from its customers only because Dart would be in violation of the ''14-hour clock'' and ''split S/B rule.''

**Request for Comments**

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on Dart's application for an exemption from the ''14-hour rule'' and split S/B provisions in 49 CFR Part 395. The Agency will consider all comments received by close of business on December 26, 2007. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

Issued on: November 9, 2007.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. E7–22881 Filed 11–23–07; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### Office of Analysis, Research and Technology Forum

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of Meeting/Forum.

**SUMMARY:** This notice invites interested persons to participate in a forum titled, ''Federal Motor Carrier Safety Administration's Analysis, Research and Technology Programs'', sponsored by the FMCSA Office of Analysis, Research and Technology (ART) in conjunction with the 87th Annual Meeting of the Transportation Research Board (TRB). The purpose of the 2008 ART Forum is to provide information on various initiatives from FMCSA's analysis, research, and technology programs. Speaker topics will include the results of the On-Board Monitoring Safety Study; an overview of the On-Board Safety Technologies FMCSA has tested and evaluated; the results of the Violations Severity Assessment Study; a presentation titled, ''When Cars Collide with Trucks and Buses'', an update on the Employer Notification Service Pilot Project; and, a review of FMCSA's Wireless Roadside Inspection and Smart Roadside Activities. Attendees will have the opportunity to dialogue with FMCSA subject-matter experts through an open question and answer session.

*Where and When:* Marriott Wardman Park Hotel, Virginia B & C, 2660 Woodley Road, NW., Washington, DC 20008, on Tuesday, January 15, 2008. Sign-In begins at 7:30 a.m. and the forum starts at 8 a.m. and ends at 12 p.m.

*Registration:* This forum is listed as a session in the TRB Annual Meeting Program and all registrants are welcome to attend. TRB registration is not required to attend the forum and it is open to the public at no cost. To register for the TRB Annual Meeting, visit *http://www.trb.org.* To attend the forum only, send an e-mail to: *TRB2008@dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Albert Alvarez, Office of Analysis, Research and Technology (MC–RR), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, NE., Washington, DC 20590; telephone (202) 385–2387 or e-mail *albert.alvarez@dot.gov.* Office hours are from 8 a.m. to 4:30 p.m., E.S.T., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** Forum attendees will receive an information

packet on the Office of Analysis, Research and Technology's current programs. While the forum will be open to the public, space will be limited. Individuals requiring special needs/accommodations (sign, reader, etc.), please call Erica Swartz, 202–334–1232, or e-mail *TRBMeetings@NAS.edu.*

Issued on: November 6, 2007.

**Terry Shelton,**

*Associate Administrator for Research and Information Technology.*

[FR Doc. E7–22883 Filed 11–21–07; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2007–0042]**

### Motor Carrier Safety Advisory Committee Public Meeting

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of Motor Carrier Safety Advisory Committee Meeting.

**SUMMARY:** FMCSA announces that the Motor Carrier Safety Advisory Committee (MCSAC) will hold a committee meeting. The meeting is open to the public.

**DATES:** The meeting will be held from 1 p.m. to 5 p.m. on December 6, 2007, and 9 a.m. to 11 a.m. on December 7, 2007. Written comments must be received by January 7, 2008.

**ADDRESSES:** The meeting will take place at the U.S. Department of Transportation, Media Center, West Building, Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Parks, Acting Chief, Strategic Planning and Program Evaluation Division, Office of Policy Plans and Regulation, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–5370, *mcsac@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Section 4144 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59) required the Secretary of the U.S. Department of Transportation to establish in FMCSA, a Motor Carrier Safety Advisory Committee. The advisory committee provides advice and recommendations to the FMCSA Administrator on motor carrier safety programs and motor carrier safety regulations. The advisory committee operates in accordance with the Federal Advisory Committee Act (5 U.S.C. App 2). The FMCSA Administrator appointed 15 members to serve on the advisory committee on March 5, 2007.

#### II. Meeting Participation

The meeting is open to the public and FMCSA invites participation by all interested parties, including motor carriers, drivers, and representatives of motor carrier associations. Please note that participants will need to be pre-cleared in advance of the meeting in order to enter the building. By December 3, 2007, e-mail *mcsac@dot.gov* if you plan to attend the meeting to facilitate the pre-clearance process. For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, e-mail *mcsac@dot.gov.* As a general matter, the committee will make one hour available for public comments on Thursday, December 6, 2007, 4 p.m. to 5 p.m. Individuals wishing to address the committee should send an e-mail to *mcsac@dot.gov* by noon on December 6, 2007. The time available will be reasonably divided among those who have signed up to address the committee, but no one will have more than 15 minutes. Individuals wanting to present written materials to the committee should submit written comments identified by Federal Docket Management System (FDMC) Docket Number FMCSA–2007–0042 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Issued on: November 19, 2007.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. E7–22915 Filed 11–23–07; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Intent To Prepare an Environmental Impact Statement for Proposed Transit Improvements in the Draper Corridor of Metropolitan Salt Lake City, UT

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation (DOT).

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** The Federal Transit Administration (FTA) and Utah Transit Authority (UTA) intend to prepare an Environmental Impact Statement (EIS) to evaluate proposed public transportation improvements to extend fixed guideway transit service through the cities of Sandy and Draper to the southernmost part of Salt Lake County, Utah. The Wasatch Front Regional Council (WFRC) has adopted a long-range transportation plan, which is a comprehensive system plan and includes the full build-out of public transportation improvements in several corridors. The general alignments of the corridors have been identified in the approved plan. The Draper Transit Corridor has been identified in the plan as a two-track extension of the existing North-South Light Rail Transit (LRT) line from its current terminus at 10000 South in Sandy to about 14600 South in Draper along the UTA owned right-of-way. The Draper Transit Corridor Project, as defined in the WFRC long-range plan, was identified as the preferred alternative at the conclusion of a locally prepared alternatives analysis. The EIS will build on the results of the local alternatives analysis and evaluate other reasonable alternatives in accordance with appropriate statutes and regulations.

The EIS will be prepared in accordance with section 102(2)c of the National Environmental Policy Act of 1969 (NEPA) and pursuant to the Council on the Environmental Quality's regulations (40 CFR parts 1500–1508), FTA/FHWA joint regulations (23 CFR 771) as well as provisions of the Safe, Accountable, Flexible Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). The purpose of this notice is to alert interested parties regarding the intent to prepare the EIS, to provide information on the nature of the proposed project and possible alternatives, to invite public participation in the NEPA process (including providing comments on the scope of the DEIS), and to announce that

a public scoping meeting will be conducted.

The EIS will examine and evaluate a number of transit alternatives in the corridor including a Transportation Systems Management (TSM) Alternative. Any additional alternatives generated by the scoping process as well as the proposed station locations for the Build alternatives will also be considered. The alternatives will be compared to a No-Action Alternative for evaluation purposes.

Scoping of the EIS will be accomplished through a public meeting, correspondence with interested persons, organizations and Federal, State and local agencies, and through a meeting with cooperating and participating public agencies. A scoping information packet will be posted on the UTA Web site at *http://www.rideuta.com* and hard copies of the packet will be distributed on request.

*Meeting Dates*

*Agency Coordination Meeting:* An agency coordination meeting will be held at 1 p.m. on Tuesday December 11, 2007 at the Utah Transit Authority Meadowbrook office located at 3500 South 700 West, Salt Lake City, Utah.

*Public Scoping Meeting:* A Public Scoping meeting to accept comments on the scope of the EIS will be held on Wednesday, December 12, 2007, from 5 p.m. to 8 p.m., at Sprucewood Elementary, located at 12025 South 1000 East, Sandy, Utah.

The project's purpose and need, and the initial set of alternatives proposed for study will be presented at this meeting. Comments may be given verbally or in writing at the scoping meeting. Every reasonable effort will be made to meet special needs. The meeting location will be accessible to persons with disabilities. Individuals who require special accommodations, such as sign language interpreter, to participate in the meeting should contact Ms. Sherry L. Repscher, ADA Compliance Officer, Utah Transit Authority, 3600 South 700 West, Salt Lake City, UT 84119–0810 or by telephone at (801) 262–5626 or TDD at (801) 287–4657.

**ADDRESSES:** Written comments should be sent to the following address by December 26, 2007: Mary DeLoretto, Utah Transit Authority, 3600 South 700 West, Salt Lake City, UT 84119 or *mdeloretto@rideuta.com*. The location of the public scoping meeting is given above under ''Meeting Dates''.

**FOR FURTHER INFORMATION CONTACT:** Charmaine Knighton, Deputy Regional Administrator, Region VIII, Federal Transit Administration, 12300 West Dakota Avenue, Suite 310, Denver, CO 80228. Telephone: 720–963–3327.

**SUPPLEMENTARY INFORMATION:**

**I. Scoping**

The FTA and UTA invite all interested individuals and organizations, public agencies, and Native American Tribes to comment on the scope of the EIS including the project's purpose and need, alternatives to be evaluated to meet the purpose and need; impacts to be evaluated, and the evaluation methods to be used. Comments should focus on refining the purpose and need statement, developing alternatives to meet the purpose and need that have comparable or lower cost and fewer adverse impacts, and on identifying specific social, economic, or environmental impacts to be evaluated.

**II. Description of the Project Study Area and Its Purpose and Need**

The Draper Transit Corridor Project study area begins in Sandy City just south of the current end-of-line 10000 South station of the UTA TRAX North-South LRT line. The study area is generally bounded by 10000 South on the north, along 1300 East and one mile east and south of the UTA–owned railroad right-of-way on the east and south, and the western Draper City limits and Jordan River on the west. It is located primarily in the cities of Sandy and Draper, and includes parts of White City, South Jordan, and Bluffdale.

The primary purpose of the Draper Transit Corridor Project is to extend LRT transit service to the southernmost geographic reach of the Salt Lake Valley. The overall goal of the proposed project is to improve mobility in the corridor by extending the existing UTA rail transit line in order to reduce congestion on arterial streets and I–15 during peak travel periods and improve reliability of travel times. The UTA TRAX LRT extension increases transportation system capacity in South Salt Lake County.

The public and participating and cooperating agencies are invited to consider and comment on this preliminary statement of the purpose and need for the proposed project.

**III. Alternatives**

In addition to a No-Action Alternative, a range of reasonable alternatives will be evaluated in the EIS including, the locally preferred LRT extension in the UTA–owned right-of-way South. Additional alternatives to be considered include:

- Transportation Systems Management (TSM) Alternative: This alternative consists of the best transit service that can be provided to meet the project's purpose and need without building the LRT line extension.
- Other reasonable Build alternatives resulting from the project scoping process, including those that involve other modes or alignments and that satisfy the project purpose and need.

The location of stations will also be developed and presented in the EIS for each build alternative that is advanced.

**IV. Probable Effects**

The purpose of the EIS is to evaluate the environmental consequences of proposed alternatives for meeting the purpose and need for transit in the Draper corridor before committing financial and other resources to implementing the proposed project. The EIS will examine the extent to which the alternatives result in adverse environmental impacts and identify corresponding actions to eliminate, reduce, or mitigate those impacts.

UTA and FTA will evaluate all significant environmental, social, and economic impacts of the alternatives analyzed in the EIS. Impact areas to be addressed include: Land use, zoning and economic development; secondary development; land acquisition, displacements and relocations; cultural resources (including impacts on historical, archaeological and paleontological resources); parklands/recreational areas; visual and aesthetic qualities; neighborhood compatibility; environmental justice; natural resource impacts (including air quality, wetlands, water resources, geology/soils, wildlife, threatened and endangered species; noise and vibration; and hazardous materials); energy; safety and security; utilities; traffic and transportation impacts and airport operations. Potential impacts will be addressed for the long-term operation of each alternative and the short-term construction period. Measures to avoid, minimize, or mitigate all adverse impacts will be identified, evaluated, and adopted as appropriate.

**V. FTA Procedures**

The regulation implementing NEPA, as well as provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), call for public involvement in the NEPA process. Section 6002 of SAFETEA–LU requires that FTA and UTA do the following: (1) Extend an invitation to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project to become ''participating agencies;'' (2)

provide an opportunity for involvement by participating agencies and the public to help define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in, and comment on, the environmental review process. An invitation to become a participating or cooperating agency, with scoping materials appended, will be extended to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project. It is possible that FTA and UTA will not be able to identify all Federal and non-Federal agencies and Native American tribes that may have such an interest. Any Federal or non-Federal agency or Native American tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify the Project Manager identified above under **ADDRESSES** at the earliest opportunity.

UTA is seeking federal assistance from the FTA to fund the proposed project under 49 United States Code 5309 and will, therefore, be subject to regulations (49 Code of Federal Regulations (CFR) part 611) related to New Starts projects.

The EIS will be prepared in accordance with NEPA and its implementing regulation issued by the Council on Environmental Quality (40 CFR Parts 1500–1508) and with the FTA/Federal Highway Administration regulations ''Environmental Impact and Related Procedures'' (23 CFR part 771). In accordance with 23 CFR 771.105(a) and 771.133, FTA will comply with all Federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include, but are not limited to, the environmental and public hearing provisions of Federal transit laws (49 U.S.C. 5301(e), 5323(b), and 5324); the project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93); The section 404(b)(1) guidelines of EPA (40 CFR part 230); the regulation implementing section 106 of the National Historic Preservation Act (36 CFR Part 800); the regulation implementing section 7 of the Endangered Species Act (50 CFR part 402); Section 4(f) of the Department of Transportation Act (23 CFR 771.135); and Executive Orders 12898 on environmental justice, 11988 on floodplain management, and 11990 on wetlands.

Issued on: November 14, 2007.

**Charmaine Knighton,**

*FTA Deputy Regional Administrator, Region VIII.*

[FR Doc. E7–22913 Filed 11–23–07; 8:45 am]

**BILLING CODE 4910–57–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[U.S. DOT Docket No. NHTSA–2007–0039]**

### Reports, Forms, and Recordkeeping Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Request for public comment on proposed revision of the previously approved collection of information, OMB # 2127–0646.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes the collection of information for which NHTSA intends to seek OMB approval.

**DATES:** Comments must be received on or before January 25, 2008.

**ADDRESSES:** Direct all written comments to U.S. Department of Transportation Dockets, 1200 New Jersey Ave, SE., Washington, DC 20590. Docket No. NHTSA–2007–0039

**FOR FURTHER INFORMATION CONTACT:** John Siegler, Ph.D., Contracting Officer's Technical Representative, Office of Behavioral Safety Research (NTI–132), National Highway Traffic Safety Administration, 1200 New Jersey Ave, SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) how to enhance the quality, utility, and clarity of the information to be collected; and

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, and or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed revision of the previously approved collection of information, OMB # 2127–0646:

**Evaluation Surveys for Impaired Driving and Seat Belt Interventions**

*Type of Request*—Revision of the previously approved collection of information.

*OMB Clearance Number:* 2127–0646.

*Form Number:* NHTSA1010.

*Requested Expiration Date of Approval*—3 years from date of approval.

*Summary of the Collection of Information*—The National Highway Traffic Safety Administration (NHTSA) proposes to conduct telephone surveys to evaluate interventions designed to increase seat belt use and reduce impaired driving. Sample sizes would range from 200 to 2000 depending on the geographic unit being surveyed (Nation, Region, State, Community) and the evaluation design for the intervention (e.g., number of analytic groups). Interview length would be 10 minutes. The surveys would collect information on attitudes, awareness, knowledge, and behavior related to the intervention. The surveys would follow a pre-post design where they are administered prior to the implementation of the intervention and after its conclusion. Interim survey waves may also be administered if the duration of the intervention permits.

In conducting the proposed surveys, the interviewers would use computer-assisted telephone interviewing to reduce interview length and minimize recording errors. A Spanish Language translation and bilingual interviewers would be used to minimize language

barriers to participation. The proposed surveys would be anonymous.

*Description of the Need for the Information and Proposed Use of the Information*

The National Highway Traffic Safety Administration (NHTSA) was established to reduce the mounting number of deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research as a foundation for the development of motor vehicle standards and traffic safety programs.

The heavy toll that impaired driving exacts on the nation, in fatalities, injuries, and economic costs, is well documented. Strong documentation also exists to show that wearing a seat belt is one of the most important actions a person can take to prevent injury or fatality in the event of a crash, but a significant proportion of the population still does not wear them. The persistence of these traffic safety problems points to a continuing need for effective interventions to address impaired driving and non-use of safety belts. This in turn calls for strong evaluation efforts to identify what interventions are effective. This includes monitoring key interventions that have been shown to be effective in order to determine whether they are retaining their potency, as well as identifying new or refined interventions that may influence parts of the population that have been resistant to previous measures.

Over the next few years, a number of legislative and programmatic changes will require NHTSA to collect public awareness information about its programs. Under section 410 of SAFETEA–LU, spending for State enforcement grants for impaired driving programs will increase almost 100 million dollars annually, from 39.6 million in 2005 to $139 million in 2009. States seeking to access these grants for specific impaired driving activities will need to have implemented a number of programs in order to be eligible for these grants including; statewide checkpoints and/or saturation patrols, prosecution/adjudication outreach, increased BAC testing of drivers in fatal crashes, high BAC law (stronger/additional penalties), effective alcohol rehabilitation and/or DWI courts, under age 21 program, administrative license revocation or suspension, and self-sustaining programs.

Under Section 406 of SAFETEA–LU, incentive grants to encourage States to enactment and enforce primary seat belt laws were $124.5 million per year between 2006 and 2009. States were eligible for these grants if they passed a primary seat belt law, or achieved a state seat belt use rate of 85% for two consecutive years after passing a primary law. Under Section 405 of SAFETEA–LU, incentive grants to encourage States to adopt and implement effective programs to reduce deaths and injuries from riding unrestrained or improperly restrained in motor vehicles increased from $19.84 million annually in 2005 to $25 million annually in 2006 and through 2009. States can only use these grant funds to implement and enforce occupant protection programs.

It is expected that such heightened activity will increase drivers' awareness of these programs and reduce incidents of impaired driving and unrestrained or improperly restrained driving. Public awareness surveys would enable NHTSA to evaluate the effectiveness of this increased spending.

Between 2006 and 2009, SAFETEA–LU has authorized NHTSA to spend $29 million annually on National media to promote a message of high visibility enforcement for both impaired driving and occupant protection programs. This requires NHTSA to examine public awareness of programs to determine whether the media messages are reaching the target audience.

In order to reduce the work requirements for each State and to create sets of survey data that may be compared among the States, NHTSA will grant one or more separate awards to survey firms with expertise in conducting random telephone surveys. The data will be used to properly plan and evaluate enforcement activities directed at reducing the occurrence of alcohol impaired driving and increasing the use of safety belts. Data from National surveys will be used to assess the overall effectiveness of these programs, while State data will assess effectiveness of individual State programs. States found to have implemented effective programs to reduce their impaired driving problem, and increased their seat belt use, will prepare materials that highlight major features of their programs to be disseminated among States that want to implement an improved alcohol enforcement program or occupant protection enforcement program.

It should be noted that during the past decade NHTSA has conducted surveys on attitudes and behaviors on impaired driving and seat belt use. These surveys were very useful in documenting effective programs that have increased awareness of occupant protection and impaired driving issues. Most of these surveys were conducted years ago and cannot be used to evaluate new programs scheduled to be initiated in the next few years.

*Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)*

Over the next 3 years, NHTSA intends to conduct National telephone surveys to collect data from a total of 28,000 participants. For the impaired driving programs, 2 sets of pre/post intervention surveys, each with sample sizes of 1200, will be administered annually for 3 years. For the Occupant Protection programs, 2 sets of pre/post intervention surveys, each with sample sizes of 1200, will be administered annually for 3 years. NHTSA may also select certain sub-groups to survey, including State, Regional, and Community telephone surveys to monitor and evaluate occupant protection and impaired driving demonstration projects. Typically, a State demonstration survey will require 500 participants. A regional demonstration survey can range from as few as 200 participants for a small county to 2000 participants for a region covering more than one State.

Interviews will be conducted with persons at residential phone numbers selected using random digit dialing. No more than one respondent per household will be selected, and each sample member will complete just one interview. Businesses are ineligible for the sample and would not be interviewed. After each wave is completed and the data analyzed, the findings will be disseminated to each State for review.

*Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information*

NHTSA estimates that respondents in the sample would require an average of 10 minutes to complete the telephone interviews. Thus, the number of annual estimated reporting burden on the general public would be 1,600 hours for the National surveys and a maximum of 2,800 hours for the State and regional demonstration surveys, or a maximum of 4,400 hours per year for the combined National, State, and regional surveys. The respondents would not incur any reporting or record keeping costs from the information collection.

**Authority:** 44 U.S.C. 3506(c)(2)(A).

**Marilena Amoni,**

*Associate Administrator for Research and Program Development.*

[FR Doc. E7–22880 Filed 11–23–07; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2007–0020, Notice 1]**

### Ferrari S.p.A. and Ferrari North America; Receipt of Application for a Temporary Exemption From the Advanced Air Bag Requirements of FMVSS No. 208

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of receipt of petition for temporary exemption from provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection.*

**SUMMARY:** In accordance with the procedures in 49 CFR Part 555, Ferrari S.P.A. and Ferrari North America (collectively, ''Ferrari'') have petitioned the agency for a temporary exemption from certain advanced air bag requirements of FMVSS No. 208. The basis for the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

This notice of receipt of an application for temporary exemption is published in accordance with the statutory provisions of 49 U.S.C. 30113(b)(2). NHTSA has made no judgment on the merits of the application.

**DATES:** You should submit your comments not later than December 26, 2007.

*Comments:* We invite you to submit comments on the application described above. You may submit comments identified by docket number at the heading of this notice by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* DOT 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.
- *Hand Delivery or Courier:* U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, Monday through Friday, except Federal holidays.
- *Fax:* 1–(202)–493–2251

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

*Docket:* For access to the docket in order to read background documents or comments received, go to *http://www.reglulations.gov*, at any time or to M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

*Confidential Business Information:* If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

**FOR FURTHER INFORMATION CONTACT:** Mr. Ari Scott, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Telephone:* (202) 366–2992; *Fax:* (202) 366–3820.

### Discussion

### I. Advanced Air Bag Requirements and Small Volume Manufacturers

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as ''advanced air bags.'' [1] The upgrade was designed to meet the goals of improving protection for occupants of all sizes, belted and unbelted, in moderate-to-high-speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low-speed crashes.

The advanced air bag requirements were a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of air bags. This plan also included an extensive consumer education program to encourage the placement of children in rear seats. The new requirements were phased in beginning with the 2004 model year.

Small volume manufacturers were not subject to the advanced air bag requirements until September 1, 2006, but their efforts to bring their respective vehicles into compliance with these requirements began several years earlier. However, because the new requirements were challenging, major air bag suppliers concentrated their efforts on working with large volume manufacturers, and thus, until recently, small volume manufacturers had limited access to advanced air bag technology. Because of the nature of the requirements for protecting out-of-position occupants, ''off-the-shelf'' systems could not be readily adopted. Further complicating matters, because small volume manufacturers build so few vehicles, the costs of developing custom advanced air bag systems compared to potential profits discouraged some air bag suppliers from working with small volume manufacturers.

As always, we are concerned about the potential safety implication of any temporary exemptions granted by this agency. In the present case, we are seeking comments on a petition for an extension of a temporary exemption from the advanced air bag requirements submitted by a manufacturer of high-performance sports cars.

### II. Overview of Petition for Economic Hardship Exemption

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Ferrari has petitioned the agency for an extension of a temporary exemption from certain advanced air bag requirements of FMVSS No. 208. The basis for the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply

[1] See 65 FR 30680 (May 12, 2000).

with the standard. The requested exemption would apply to Ferrari F430 model vehicles and would extend for a period of one year beginning on August 1, 2008. A copy of the petition [2] is available for review and has been placed in the docket for this notice.

**III. Statutory Background for Economic Hardship Exemptions**

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether a second vehicle manufacturer also might be deemed the manufacturer of that vehicle. The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not include any provision indicating that a manufacturer might have substantial responsibility as manufacturer of a vehicle simply because it owns or controls a second manufacturer that assembled that vehicle. However, the agency considers the statutory definition of ''manufacturer'' (49 U.S.C. 30102) to be sufficiently broad to include sponsors, depending on the circumstances. Thus, NHTSA has stated that a manufacturer may be deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer if the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

**IV. Petition of Ferrari**

*Background.* NHTSA notes that a manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production does not exceed 10,000, as determined by the NHTSA Administrator (*15 U.S.C. 1410(d)(1)*). While Fiat S.p.A., a major vehicle manufacturer, holds a majority interest in Ferrari, NHTSA still considers that Ferrari's production will not exceed that number. Consistent with past determinations, NHTSA has determined that Fiat's interest in Ferrari does not result in the production threshold being exceeded [3] (see 70 FR 71372). In its current petition, Ferrari states that during the twelve month period from June 1, 2006 to June 1, 2007, Ferrari's worldwide production of motor vehicles was 6,249. If the requested exemption is granted, Ferrari anticipates that its production that year will be approximately 7,200 vehicles.

In response to Ferrari's original petition for exemption in 2005,[4] the agency stated that the Ferrari F430 bears no resemblance to any motor vehicle designed or manufactured by Fiat, and that the agency understood that the F430 was designed and engineered without assistance from Fiat. Further, the agency stated that such assistance as Ferrari may receive from Fiat relating to use of test facilities and the like is an arms length transaction for which Ferrari pays Fiat. Therefore, NHTSA concluded that Fiat was not a manufacturer of Ferrari vehicles by virtue of being a sponsor. We continue to believe this is the case.

*Requested exemption.* Ferrari is requesting an extension of the temporary exemption that it previously received, exempting it from the advanced air bag provisions of FMVSS No. 208 with respect to the Ferrari F430 vehicles. Specifically, Ferrari is requesting an exemption from the requirements in S19, S21, and S23 of the Standard, which establish requirements using infant, three-year-old child, and six-year-old child dummies, respectively. Ferrari originally planned to produce the F430 only until late 2008. Thus, Ferrari only sought and received the current exemption, which extends until August 31, 2008. However, Ferrari states that unexpected developments, including the need to assure that the replacement model complies with new, more stringent European carbon dioxide and noise regulations and new requirements promulgated by the California Air Resources Board, have delayed the replacement vehicle until late 2009. Therefore, Ferrari is requesting a one year extension of the current exemption, through August 31, 2009.

The petitioner indicated that it intends to replace the F430 in 2009 with a new model, which will comply with all applicable FMVSSs. Therefore, need for the exemption is not expected to last beyond the date of the exemption.

*Economic hardship.* The petitioner states that the inability to sell F430 vehicles manufactured after August 31, 2008 would have severe economic consequences for Ferrari S.p.A. and Ferrari North America (FNA). Specifically, Ferrari S.p.A., while remaining a profitable enterprise, would suffer approximately $77 million in lost sales in 2009, and additional lost sales in later years. Furthermore, FNA would suffer $9 million in lost sales in 2009, and would suffer an overall loss in that year. Additionally, failure to obtain the exemption would cause an adverse financial effect through lost sales of replacement parts for several years in the future.

*Good faith efforts to comply.* Ferrari states that it considered alternate means of compliance, but found that compliance with the advanced air bag requirements of FMVSS No. 208 was not possible. As described in the notice of Ferrari's original petition for exemption, the F430 was originally designed in the mid-1990s as the 360 model, and was designed to comply with all of the requirements of the FMVSSs in effect at the time the 360 was originally designed. The petitioner stated that the provisions of FMVSS No. 208 established in 2000 (*65 FR 30680*; May 12, 2000; Advanced Air Bag rule) were not anticipated by Ferrari when the 360 vehicle model was designed. The F430, a derivative of the 360 model, was introduced in 2004. Ferrari had originally intended to replace the F430 in 2008, but now anticipates the replacement model being ready in 2009.

As described in the notice of receipt of Ferrari's previous petition, Ferrari stated that it has been able to bring the F430 into compliance with all of the high-speed belted and unbelted crash test requirements of the Advanced Air Bag rule. However, it stated that it has not been able to bring the vehicle into compliance with the child out-of-position requirements (S19, S21, and S23). Ferrari also noted that despite efforts to involve numerous potential suppliers, it was unable to identify any that are willing to work with the company to develop an occupant classification system that would comply with the requirements in S19, S21, and S23. Moreover, Ferrari had stated that it was unable to reconfigure the F430 to accommodate an occupant classification system and air bag design that would comply with these requirements.

In its current request, Ferrari states that when it realized that it would need to continue production of the F430 beyond September 1, 2008, it again contacted several potential suppliers regarding the procurement of advanced air bag systems. This attempt, Ferrari states, was also unsuccessful. Additionally, Ferrari notes that since filing its initial petition, it has continued to work on compliance issues, and has been able to bring the F430 into full compliance with S25 of the standard. Paragraph S25 specifies

[2] The company requested confidential treatment under 49 CFR Part 512 for certain business and financial information submitted as part of its petition for temporary exemption. Accordingly, the information placed in the docket does not contain such information that the agency has determined to be confidential.

[3] 54 FR 46321; November 2, 1989.

[4] 70 FR 71372, November 28, 2005.

the crash test requirements for using an out-of-position 5th percentile adult female dummy at the driver position.

Ferrari states that further efforts to bring the F430 vehicles into full compliance with FMVSS No. 208 during the term of the requested exemption would be futile. However, Ferrari states that it is taking steps to minimize the negative safety consequences of the exemption. First, Ferrari will continue to equip the F430 with a manual air bag on/off switch for the passenger air bag as standard equipment, in order to prevent the possibility of an air bag deployment when a child is present. Second, Ferrari will continue to offer to provide purchasers with child restraint systems designed to automatically suppress the passenger air bag when the restraint is present, at no cost.

*Ferrari argues that an exemption would be in the public interest.* The petitioner put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest and would not have a significant adverse impact on safety. Specifically, Ferrari argues that the public interest is served by four factors. These include: (1) Satisfying the public interest in offering consumers a wider variety of motor vehicle choices; (2) affording continued employment to the petitioner's U.S. workforce; (3) there would be minimal safety impact from granting this exemption; and (4) that it would be inequitable to prevent Ferrari from importing the F430 until 2009, when other vehicles have been granted similar exemptions.

Ferrari states that there is consumer demand in the United States for high-performance sports cars such as the F430. It argues that compliance with the advanced air bag requirements is virtually impossible for vehicles such as the F430, which was designed before the advanced air bag rule was proposed. Ferrari notes that NHTSA has, in the past, stated that it believes the public interest is often served by affording consumers a wider variety of motor vehicle choices. The petitioner also states that the public interest will be served in affording continued employment to the petitioner's U.S. work force, which would be affected by the granting or denial of the exemption.

Ferrari also argues that the safety drawbacks of granting an exemption will be minimal. The F430 is designed and marketed as a high performance vehicle, and therefore would have relatively little on-road operation compared with other motor vehicles. Furthermore, the petitioner states that it is unlikely that young children would be passengers in the vehicle, and that other safety measures, such as passenger air bag on/off switches and child restraint systems, are available at no cost. In addition, in its original petition for exemption, the petitioner stated that the F430 also has a variety of passive safety features not required under the FMVSS, including seat belt pretensioners, among other systems. Thus, Ferrari argues, an exemption would have a minimal impact on safety.

Finally, the petitioner suggested that this petition is similar to other petitions for exemptions from the advanced air bag standards for similar vehicles. Specifically, Ferrari stated that NHTSA has granted exemptions to several of Ferrari's competitors that extend until at least August 31, 2009. These exemptions extend to the Lamborghini Murcielago, the Lotus Elise, the Morgan Aero 8, the YES! Roadster, and the Koenigsegg CCX.[5] Ferrari argues that it would be inequitable for the agency to deny its petition for an extension of the F430 exemption until August 31, 2009.

*V. Issuance of Notice of Final Action*

We are providing a 30-day comment period. After considering public comments and other available information, we will publish a notice of final action on the application in the **Federal Register**.

Issued on: October 29, 2007.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. E7–22966 Filed 11–23–07; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–591X]**

### Laurinburg & Southern Railroad Co., Inc.—Discontinuance of Service Exemption—in Hoke and Scotland Counties, NC

Laurinburg & Southern Railroad Co., Inc. (LRS) has filed a verified notice of exemption under 49 CFR Part 1152 Subpart F-*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately 17.3-mile line of railroad between milepost 8.9, in or near Laurinburg, Scotland County, NC, and milepost 26.2, in or near Raeford, Hoke County, NC. The line traverses United States Postal Service Zip Codes 28352, 28353, 28376, 28396, and 27812, and includes the stations of Wagram and Raeford.

LRS has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) that all overhead traffic, if any, can be or already has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 26, 2007, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2),[1] must be filed by December 6, 2007.[2] Petitions to reopen must be filed by December 17, 2007, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to LRS's representative: Rose-Michele Nardi, Weiner Brodsky Sidman Kider PC, 1300 19th Street, NW., Fifth Floor, Washington, DC 20036–1609.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 19, 2007.

[5] See 71 FR 52951; 71 FR 68888; and 72 FR 17609.

[1] Each OFA must be accompanied by the filing fee, which currently is set at $1,300. *See* 49 CFR 1002.2(f)(25).

[2] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. E7–22931 Filed 11–23–07; 8:45 am]

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Federal Register

**Monday,**
**November 26, 2007**

## Part II

# Department of Housing and Urban Development

**24 CFR Parts 200 and 401**
**Implementation of Mark-to-Market Program Revisions; Final Rule**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Parts 200 and 401

**[Docket No. FR–4751–F–02]**

**RIN 2502–AH86**

## Implementation of Mark-to-Market Program Revisions

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** Based on statutory changes and HUD's technical operational experience in administering the program, this final rule implements a number of changes to the Mark-to-Market (M2M) program, HUD's mortgage restructuring program for FHA-insured projects with project-based Section 8 assistance, to facilitate processing. Unlike the M2M proposed and final rules addressing renewal of expiring Section 8 project-based assistance contracts that HUD published on January 12, 2006, this rule addresses a range of administrative and programmatic issues other than the project-based assistance contracts. This final rule follows publication of a March 14, 2006, proposed rule and takes into consideration the public comments received on the proposed rule.

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

**FOR FURTHER INFORMATION CONTACT:** Theodore Toon, Deputy Assistant Secretary, Office of Affordable Housing Preservation (OAHP), Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6230, Washington, DC 20024, telephone number (202) 708–0001 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Multifamily Assisted Housing Reform and Affordability Act (MAHRA) became law on October 27, 1997. (See Pub. L. 105–65, 111 Stat. 1384, 42 U.S.C. 1437f note.) The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act for Fiscal Year 1999 (Pub. L. 105–276, approved October 21, 1998) revised section 524(a)(2) of MAHRA to make renewal of expiring contracts under that section subject to section 516 of MAHRA, which prohibits mortgage restructuring and consideration of requests for contract renewals in the case of certain kinds of conduct by the project owner. On October 20, 1999, the Departments of Veterans Affairs, Housing and Urban Development, and Independent Agencies Appropriations Act for Fiscal Year 2000, Public Law 106–74, 113 Stat. 1047, at 1110, extensively revised section 524 of MAHRA. Among other changes, the revisions changed the method for calculating rents when an expiring or terminating Section 8 contract is renewed, and required reduction to comparable market rents for certain projects that, prior to expiration or termination, had rents that exceeded such comparable market rents.

The Mark-to-Market Extension Act of 2001 (Title VI of Pub. L. 107–116, approved January 10, 2002) (Mark-to-Market Extension Act) made a number of amendments to MAHRA and a MAHRA-related amendment to section 223(a)(7) of the National Housing Act (12 U.S.C. 1715n). A discussion of the implementation of those amendments and additional proposed revisions to HUD's mortgage restructuring program can be found in the preamble of the March 14, 2006, proposed rule (71 FR 13221).

MAHRA is currently implemented in HUD's regulations at 24 CFR parts 401 and 402. These regulations were initially published as an interim rule on September 11, 1998 (63 FR 48926). On March 22, 2000, HUD published a final rule implementing 24 CFR part 401 and portions of 24 CFR part 402 (65 FR 15485).

In order to facilitate restructurings under MAHRA, this rule also amends HUD's regulations at part 200. Part 200 is the introductory section addressing HUD's mortgage insurance programs under the National Housing Act, 12 U.S.C. 1701 *et seq.* The specific sections being amended are 24 CFR 200.20, which applies to the refinancing of insured mortgages, and 24 CFR 200.40, which sets HUD's fees and charges for its mortgage insurance programs.

For more information on the implementation of the revisions being made to the M2M program, please see the preamble of the March 14, 2006, proposed rule.

### II. This Final Rule; Changes to the March 14, 2006, Proposed Rule

This final rule follows publication of the March 14, 2006, proposed rule, and takes into consideration the public comments received on the proposed rule. After careful review of the public comments, HUD has made the following changes to the proposed rule:

1. *Removal of references to the OMHAR.* HUD has removed the definition and all references to the Office of Multifamily Housing Assistance Restructuring (OMHAR). The Office of Affordable Housing Preservation (OAHP) replaced OHMAR as of October 1, 2004. OAHP was established to assure the smooth continuation of the M2M program, utilizing authorities that continued after the legislative sunset of OMHAR. HUD has taken the opportunity afforded by this rule to update its regulations to reflect the organizational structure of the program as it is currently implemented. In addition, references to the ''Director'' of OAHP have been replaced with more general references to ''HUD'' to avoid having to amend the regulations whenever the title of a HUD official is changed. ''HUD'' is defined to include an official authorized to act under the provisions of MAHRA.

2. *Transfer Fee Exemption.* The language of § 200.40(h) is clarified to provide for a fee exemption for transfers that are contemporaneous with the restructuring of a mortgage pursuant to a restructuring plan, rather than for transfers ''in connection with'' a restructuring plan.

3. *Revised Tenant Endorsement Procedure.* In response to public comment, HUD has revised the tenant endorsement procedure. A purchaser will now only be required to hold one informational meeting, but may hold additional meetings as necessary. Tenant endorsement will be based upon a potential priority purchaser receiving a majority of the tenant heads of household's written endorsement. Those tenants who do not attend the informational meeting, or any subsequent meeting, may be directly contacted by the purchaser to collect their written endorsement. Purchasers who are unable to obtain the majority of tenant heads of household's written endorsement after undertaking reasonable efforts will be able to submit a request, in writing, to HUD. Based upon the information and explanation contained in the request, HUD will make a determination whether or not to grant tenant endorsement to a purchaser based on a lower percentage of tenants' written endorsement.

### III. Discussion of Public Comments Received on the March 14, 2006, Proposed Rule

The public comment period on the proposed rule closed on May 15, 2006. HUD received three public comments in response to the proposed rule. One of the comments was submitted jointly by a group of national organizations

representing real estate managers, lessors, lenders, builders, and realtors. One of the comments was submitted on behalf of a group of regional, state, and national organizations with extensive experience in preserving and improving HUD's inventory of multifamily housing. One of the comments was submitted by a statewide renter's association. This section of the preamble presents a summary of the significant issues raised by the public commenters on the March 14, 2006, proposed rule, and HUD's responses to these issues.

*Section 200.40 HUD Fees*

*Comment: The charging of transactional fees does discourage participation in the M2M program.* The commenter agrees with HUD that various transactional fees discourage owners from participating in the M2M program and that select fees should be exempt or eliminated.

*HUD Response:* HUD appreciates the input of regulated entities in the formulation of its regulations. Based upon HUD's experience and that of regulated entities, the regulations at § 200.40(h) and (j) will be revised to exempt transfer fees where the transfer of physical assets or substitution of mortgagors occurs contemporaneously with the restructuring of a mortgage pursuant to a restructuring plan and eliminated an application or commitment fee in connection with the insurance of a mortgage used to facilitate a restructuring plan, respectively.

*Section 401.452 Property Standards for Rehabilitation*

*Comment: The property standards for rehabilitation are reasonable.* The commenter expressed approval of the objectives of the provision to ensure that the property can attract non-subsidized tenants, but competes on rents rather than amenities, which the commenter finds reasonable.

*HUD Response:* HUD is implementing the property standards for rehabilitation as proposed. HUD believes that the property standards are realistic, by taking into consideration the resources of the project as well as ensuring the rehabilitation reflects current standards.

*Section 401.461 HUD-held Second Mortgage*

*Comment: The use of discretion in whether simple or compound interest on HUD-held second mortgages will be required is good policy.* The commenter wrote that in § 401.461(b)(1), HUD's proposed elimination of the reference to simple interests and its use of administrative discretion in requiring simple or compound interest, so that waivers will no longer be required, makes good sense. The commenter also appreciates HUD's willingness to make restructuring transactions using Low Income Housing Tax Credits (LIHTCs) feasible without the need for waiver.

*HUD Response:* HUD appreciates the support expressed for the revisions to § 401.461(b)(1). The regulatory change removes the reference to simple interest and, thereby, allows HUD to use its administrative discretion in requiring simple or compound interest. This enables HUD to make determinations that are in the best interest of the government and the individual debt restructuring.

*Comment: There should not be a time limit on the canceling, modifying, or assigning of a property's Mark-to-Market subsidiary mortgage(s) if transferring to a priority purchaser.* The commenters wrote that § 401.461(b)(1) should be revised to eliminate the time limit (i.e., 3-year window) for canceling, modifying, or assigning a property's Mark-to-Market subsidiary mortgage(s), so long as the transfer is to a priority purchaser. In addition, the commenters suggested that the regulation clarify that there is no time limit for transferring Mark-to-Market restructured properties to priority purchasers. Currently, Appendix C of the Operating Procedures Guide and the Standard Restructuring Commitment form allow the forgiveness of second and third debt to qualified purchasers only if the property transfers within 3 years of restructuring.

*HUD Response:* HUD has not revised the regulations in response to this comment. Section 401.461(b)(5) states that HUD will consider modification, assignment of the second mortgage to an acquiring entity, or forgiveness of all or part of the second mortgage to a priority purchaser. No defined time period for making the request is contained in this section. In applying § 401.461(b)(5), as described in Appendix C of the Operating Procedures Guide and the Standard Restructuring Commitment form, HUD has generally limited its consideration to requests made by priority purchasers within 3 years of the restructuring. HUD believes that this guidance provides an appropriate and reasonable time frame for a priority purchaser to request modification, assignment of the second mortgage to an acquiring entity, or forgiveness of all or part of the second mortgage. However, HUD will consider, on a case-by-case basis, requests made by a priority purchaser that are outside of this 3-year window. Such requests remain subject to continuing statutory authority.

*Section 401.480 Sale or Transfer of Project*

*Comment: The tenant endorsement procedure for attaining priority purchaser status should be revised.* The commenters wrote that all provisions pertaining to a second meeting devoted to a formal voting process should be eliminated. This would also eliminate the need for proxies and, thereby, eliminate the increased possibility of undue influence (monetary or other promised favors), which distort the endorsement process. In place of the second meeting, the commenters suggested revising the regulations to require that 51 percent of the tenants provide written endorsement. The commenters believe that this would encourage a priority purchaser to thoroughly engage tenants in order to gain their informed, genuine, and meaningful support.

*HUD Response:* HUD specifically requested comment on the procedure for demonstrating tenant endorsement and solicited recommendations for a less prescriptive and more streamlined procedure that will meet the goal of providing an opportunity for the informed participation of tenants in an endorsement process that can reasonably be considered to be valid. In response to these comments and recommendations, HUD is revising the rule by adopting the commenters' suggested endorsement procedure with some modifications. A purchaser is only required to hold an informational meeting under this final rule; however, additional meetings may be scheduled in accordance with the notice requirements of § 401.480(e). Tenant endorsement under § 401.480(e) is to be demonstrated by a purchaser submitting documentation, such as ballots, letters of support, or petitions, to HUD from a majority (51 percent) of the tenant heads of household. A purchaser may contact tenant heads of households who did not attend the meeting, to collect a written endorsement.

HUD is also implementing a process by which a purchaser who has made a reasonable effort to obtain the majority of the tenants' endorsement but was unsuccessful can ask HUD to make a determination as to whether endorsement can be obtained with a lower percentage of endorsing tenants. The purchaser will have to make the request in writing and include a description of the efforts undertaken to secure the endorsement, an explanation of the circumstances that resulted in failing to receive endorsement from a majority of tenant heads of household, and any comments received from

tenants regarding the approval of the endorsement.

HUD believes that this process is less prescriptive than the procedures that were proposed and serves the interests of both purchasers and tenants.

*Comment: The informational meeting should be held at a convenient time and location and conducted by a neutral third party.* The commenter wrote that the proposed regulation should be revised to require that the informational meeting be held at a time and location convenient to the majority of the tenants, and should be conducted by the Participating Administrative Entity (PAE) or other neutral third party.

*HUD Response:* HUD has not revised the rule in response to this comment. It is HUD's intent to allow flexibility in the conduct of tenant meetings so as to allow the needs and resources of each project to be addressed. Further, since tenant endorsement will be determined based on receiving endorsement of 51 percent of the tenant heads of household, it is in the interest of all involved to hold meetings that are convenient as to time and location with competent facilitators. HUD will issue guidance, as needed, that outlines informational meeting best practices.

*Comment: The final rule should state that there must be at least 3 weeks between the informational meeting and final endorsement of the purchaser.* Two commenters supported the requirement of an informational meeting, but would revise the regulation to require that 3 weeks elapse between the date of the informational meeting and when final endorsement of the purchaser is made.

*HUD Response:* HUD has not revised the rule in response to this comment. HUD does not believe that a required time interval between a tenant meeting and the final endorsement of the purchaser would be beneficial. HUD acknowledges that time is needed for adequate consideration and deliberation; however, HUD chooses not to prescribe how much time is necessary.

*Comment: Additional elements should be required for the informational meeting.* The commenters wrote that the regulations should require prospective priority purchasers to prepare materials that must be readily available at no cost to residents before and after the informational meeting. Included among the materials suggested by the commenters were any plans for repairs and improvements to the property; any changes in the on-site manager or management company; any changes in utility billing; the names and locations of other properties owned by the potential purchaser, specifically identifying properties that are HUD-assisted; and the names and affiliations of the prospective purchaser's directors and officers. The commenters also wrote that if English is not the primary language of a significant number of tenants, then the final rule should require the prospective owner to provide interpreters and written materials for the informational meeting in other languages spoken by 15 percent of the tenants.

*HUD Response:* HUD has not revised the rule in response to this comment. As stated above, HUD does not want to impose overly prescriptive requirements on the tenant endorsement procedure. HUD has created the endorsement framework and believes that the needs and resources of the project and the restructuring of that project should dictate the conduct of the meeting(s) and endorsement process. HUD will supplement this framework by issuing guidance containing best practices, as needed.

*Comment: A representative of the purchaser must attend the informational meeting.* The commenters also wrote that the final rule should require that a representative of the prospective purchaser must be present at the informational meeting. The representative should be prepared to discuss plans for improving the property and capable of addressing tenant questions and concerns.

*HUD Response:* HUD agrees with this comment and has included a provision at § 401.480(e)(1), which requires that a representative of the purchasing entity attend the required tenant meeting(s), present its plan for the acquisition and improvement of the project, and answer the questions of tenants attending the meeting.

*Comment: The provisions governing how tenants are to be notified of the informational meeting should be revised.* The commenters wrote that § 401.480(e)(2), regarding notice to tenants and tenant organizations, should be modified to require that notice must be delivered directly or by mail to the parties listed in § 401.501, which include local government, the public housing authority, the Outreach and Training Grant (OTAG) or Intermediary Technical Assistance Grant (ITAG) organization, other appropriate neighborhood representatives, and other affected parties. Additionally, the commenters suggested the regulations must state that notice of the informational meeting must also be posted in three conspicuous places on the property and provided in appropriate languages. The commenters wrote that if the informational meeting is not part of the second PAE-convened tenant comment meeting, then the regulations must require notice no less than 3 days and no more than 10 days prior to the informational meeting.

*HUD Response:* HUD has not revised the rule in response to this comment. HUD believes that the imposition of such prescriptive requirements would not be beneficial to the tenant endorsement process. HUD envisions an endorsement procedure that reflects the needs and resources of the project. However, HUD will issue, as determined to be necessary, guidance outlining best practices.

*Comment: The definition of ''tenant organization'' should be amended to be more inclusive.* The commenters wrote that the final rule should state that a ''tenant organization'' includes any organization based on the property, as well as any nonprofit organizing group working with the property's residents.

*HUD Response:* HUD has not revised the rule in response to this comment. HUD believes that the scope of the definition of ''tenant organization,'' which is limited to households of occupied units of the property, is appropriate. Tenant-organizing groups may help establish a tenant organization, but do not themselves constitute tenant organizations for purposes of the rule.

*Comment: The regulations should contain the Operating Procedures Guide regarding the posting of notices, meeting times and location, and priority purchaser ''independence'' criteria.*

*HUD Response:* HUD has not revised the rule in response to this comment. HUD does not want to impose requirements as to all aspects of the tenant endorsement procedure. HUD intends to promote flexibility and responsiveness to each project. HUD will issue guidance, as needed, to inform participants of best practices for the endorsement process.

*Comment: A record of the informational meeting should be submitted with the restructuring plan or as an addendum to the restructuring plan.* The commenters wrote that the final rule should require that comments made by tenants at the informational meeting regarding needed repairs, current management, and other concerns must be captured in writing and submitted with the restructuring plan or as an addendum to the restructuring plan.

*HUD Response:* HUD has not revised the rule in response to this comment. HUD does not believe that a record of the informational meeting should be submitted with the restructuring plan,

because the meeting is outside the scope of HUD's review. This does not preclude tenants from conditioning their endorsement on the potential priority purchaser including such items in the restructuring plan; however, HUD chooses not to make this a requirement.

*Comment: Claims or promises made by potential priority purchasers should be made a binding provision of the restructuring plan.* The commenters stated that the final rule should provide that any claims or promises made to tenants in order to ensure their endorsement must be a binding provision in the restructuring plan, and enforceable by tenants.

*HUD Response:* HUD has not revised the rule in response to this comment. HUD believes that the rule adequately requires and encourages extensive tenant participation in the sale or transfer process when the sale or transfer is to a priority purchaser.

**IV. Findings and Certifications**

*Paperwork Reduction Act*

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2502–0563. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This rule, which implements a statutory mandate to establish a program for the resolution of a narrow category of disputes, will not impose any federal mandates on any state, local, or tribal government, or the private sector within the meaning of UMRA.

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The finding continues to apply and remains available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule affects only owners of multifamily projects with Section 8 assistance. There are very few multifamily Section 8 owners who are small businesses. Therefore, this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

*Executive Order 13132, Federalism*

This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

**List of Subjects**

*24 CFR Part 200*

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs-housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

*24 CFR Part 401*

Grant programs-housing and community development, Housing, Housing assistance payments, Housing standards, Insured loans, Loan programs-housing and community development, Low and moderate income housing, Mortgage insurance, Mortgages, Rent subsidies, Reporting and recordkeeping requirements.

■ Accordingly, HUD amends 24 CFR parts 200 and 401 as follows:

## PART 200—INTRODUCTION TO FHA PROGRAMS

■ 1. The authority citation for part 200 continues to read as follows:

**Authority:** 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

■ 2. Revise § 200.20 to read as follows:

**§ 200.20 Refinancing insured mortgages.**

An existing mortgage insured under the Act, or an existing mortgage held by the Secretary that is subject to a mortgage restructuring and rental assistance sufficiency plan under the Multifamily Assisted Housing Reform and Affordability Act, 42 U.S.C. 1437f note (MAHRA), may be refinanced pursuant to section 223(a)(7) of the Act and such terms and conditions as may be established by the Commissioner. The term of such refinancing in connection with the implementation of an approved restructuring plan under section 401, subpart C of this title, may be up to, but not more than, 30 years.

■ 3. In § 200.40, revise paragraphs (h) and (j) to read as follows:

**§ 200.40 HUD fees.**

* * * * *

(h) *Transfer fee.* Upon application for the approval of a transfer of physical assets or the substitution of mortgagors, a transfer fee of 50 cents per thousand dollars shall be paid on the original face amount of the mortgage in all cases, except that a transfer fee shall not be paid where both parties to the transfer transaction are nonprofit purchasers, or when the transfer of physical assets or the substitution of mortgagors occurs contemporaneously with the restructuring of a mortgage pursuant to a restructuring plan under part 401, subpart C of this title.

* * * * *

(j) *Fees not required.* (1) The payment of an application, commitment, inspection, or reopening fee shall not be required in connection with the insurance of a mortgage involving the sale by the Secretary of any property acquired under any section or title of the Act.

(2) The payment of an application or commitment fee shall not be required in connection with the insurance of a mortgage used to facilitate a restructuring plan under part 401, subpart C of this title.

## PART 401—MULTIFAMILY HOUSING MORTGAGE AND HOUSING ASSISTANCE RESTRUCTURING PROGRAM (MARK-TO-MARKET)

■ 4. The authority citation for part 401 continues to read as follows:

**Authority:** 12 U.S.C. 1715z–1 and 1735f–19(b); 42 U.S.C. 1437(c)(8), 1437f(t), 1437f note, and 3535(d).

■ 5. In § 401.2(c), remove the definition of OMHAR, revise the definition of HUD, and add the definition of OAHP to read as follows:

**§ 401.2 What special definitions apply to this part?**

* * * * *

(c) * * *

*HUD* means a HUD official authorized to act under the provisions of MAHRA, and otherwise has the meaning given in § 5.100 of this title.

* * * * *

*OAHP* means the Office of Affordable Housing Preservation, and any successor office.

* * * * *

■ 6. In § 401.101, add a new paragraph (d) to read as follows:

**§ 401.101 Which owners are ineligible to request Restructuring Plans?**

* * * * *

(d) *Notice to tenants.* The PAE or HUD will give notice to tenants of a rejection in accordance with §§ 401.500(f)(2), 401.501, and 401.502.

■ 7. In § 401.304, revise paragraphs (a)(2), (b), and (d) to read as follows:

**§ 401.304 PRA provisions on PAE compensation.**

(a) * * *

(2) HUD will establish a substantially uniform baseline for base fees for public entities. The base fee for a PAE will be adjusted, if necessary, after the first term of the PRA.

* * * * *

(b) *Incentives.* The PRA may provide for incentives to be paid by HUD. While individual components may vary between PAEs (both public and private), the total amount potentially payable under the incentive package will be uniform. Objectives may include maximizing savings to the Federal Government, timely performance, tenant satisfaction with the PAE's performance, the infusion of public funds from non-HUD sources, and other benchmarks that HUD considers appropriate.

* * * * *

(d) *Other matters.* HUD will retain the right of final approval of any fee schedule. HUD will publish the standard form of PRA and the compensation package annually on its Internet Web site.

■ 8. In § 401.309, revise the section heading and paragraphs (b)(2) and (c) to read as follows:

**§ 401.309 PRA term and termination provisions; other provisions.**

* * * * *

(b) * * *

(2) *Termination for convenience of Federal Government.* HUD may terminate a PRA, and may remove an eligible property from a PRA, at any time in accordance with the PRA or applicable law, regardless of whether the PAE is in default of any of its obligations under the PRA, if such termination is in the best interests of the Federal Government. The PRA will provide for payment to the PAE of a specified percentage of the base fee authorized by § 401.304(a) and amounts for reimbursement of third-party vendors to the PAE authorized by § 401.304(c).

* * * * *

(c) *Liability for damages.* During the term of a PRA, and notwithstanding any termination of a PRA, HUD may seek its actual, direct, and consequential damages from any PAE for failure to comply with its obligations under PRA.

* * * * *

■ 9. Revise the section heading and add a new sentence to the end of § 401.401 to read as follows:

**§ 401.401 Consolidated Restructuring Plans.**

* * * HUD's decision to approve or disapprove a Consolidated Restructuring Plan will be made on a case-by-case basis.

■ 10. Revise § 401.452 to read as follows:

**§ 401.452 Property standards for rehabilitation.**

The restructuring plan must provide for the level of rehabilitation needed to restore the property to the non-luxury standard adequate for the rental market for which the project was originally approved. If the standard has changed over time, the rehabilitation may include improvements to meet the current standards. The rehabilitation also may include the addition of significant features, in accordance with § 401.472. The result of the rehabilitation should be a project that can attract non-subsidized tenants, but competes on rent rather than on amenities. When a range of options exists for satisfying the rehabilitation standard, the PAE must choose the least costly option considering both capital and operating costs and taking into account the marketability of the property and the remaining useful life of all building systems. Nothing in this part exempts rehabilitation from the requirements of part 8 of this title concerning accessibility to persons with disabilities.

■ 11. In § 401.461, revise paragraphs (a)(1), (a)(2)(ii), (b)(1), (b)(5), and (c) to read as follows:

**§ 401.461 HUD-held second mortgage.**

(a) *Amount.* (1) The Restructuring Plan must provide for a second mortgage to HUD whenever the Plan provides for either payment of a claim under section 541(b) of the National Housing Act (541(b) claim) or the modification or refinancing of a HUD-held first mortgage that results in a first mortgage with a lower principal amount. The term ''second mortgage'' in this section also includes a new HUD-held first mortgage (not a refinancing mortgage), if a full payment of claim is made under § 401.471 or if a full payment of claim is unnecessary because surplus project accounts are available to facilitate the Restructuring Plan, pursuant to section 517(b)(6) of MAHRA, or if § 401.460(a) does not permit a restructured first mortgage in any amount.

(2) * * *

(ii) The greater of:

(A) The section 541(b) claim (or the difference between the unpaid principal balance on HUD-held mortgage debt immediately before and after the restructuring), plus surplus project accounts from residual receipts accumulated pursuant to 24 CFR 880.205(e), 881.205(e), or 883.306(e) and derived from an expiring Section 8 Housing Assistance Payments contract and not otherwise distributed to the owner and made available to facilitate the Restructuring Plan pursuant to section 517(b)(6) of MAHRA, and

(B) The difference between the unpaid balance on the first mortgage immediately before and after the restructuring.

(b) *Terms and conditions.* (1) The second mortgage must have an interest rate of at least one percent, but not more than the applicable Federal rate.

* * * * *

(5) HUD will consider modification, assignment to the acquiring entity, or forgiveness of all or part of the second mortgage, if: The Secretary holds the second mortgage; and if the project has been sold or transferred to a tenant organization or tenant-endorsed community-based nonprofit or public agency that meets eligibility guidelines determined by HUD; accepts additional

affordability requirements acceptable to HUD; and requests such modification, assignment, or forgiveness. A community-based nonprofit group or public agency demonstrates that it is tenant-endorsed in accordance with § 401.480(e).

(c) *Additional mortgage to HUD.* (1) A Restructuring Plan shall require the owner to give an additional mortgage on the project to HUD in an amount that:

(i) For the restructuring of a mortgage insured by HUD, does not exceed the difference between:

(A) The amount of a section 541(b) claim paid under § 401.471 increased by any residual receipts, pursuant to 24 CFR 880.205(e), 881.205(e), or 883.306(e); and

(B) The principal amount of the second mortgage; or

(ii) For the restructuring of a mortgage held by HUD, does not exceed the difference between:

(A) The principal amount of a restructured HUD-held mortgage and the sum of, as applicable, a restructured HUD-held first mortgage at reduced principal amount, new mortgage funds paid to HUD at closing, and surplus project accounts other than residual receipts, pursuant to 24 CFR 880.205(e), 881.205(e), or 883.306(e); and

(B) The principal amount of the second mortgage.

(2) HUD may approve a Plan that does not require an additional mortgage, or provides for less than the full difference to be payable under the additional mortgage, or allows for subsequent modification, assignment, or forgiveness of the additional mortgage under any of the following circumstances:

(i) The anticipated recovery on the additional mortgage is less than the servicing costs; or

(ii) HUD has approved modification, assignment, or forgiveness of the second mortgage, pursuant to paragraph (b)(5) of this section.

(3) With respect to the second mortgage required by paragraph (a) of this section, any additional mortgage must:

(i) Be junior in priority;

(ii) Bear interest at the same rate; and

(iii) Require no payment until the second mortgage is satisfied, at which time it will be payable upon demand of HUD or as otherwise agreed by HUD.

■ 12. Revise § 401.472(b) to read as follows:

**§ 401.472 Rehabilitation funding.**

* * * * *

(b) *Statutory restrictions.* Any rehabilitation funded from the sources described in paragraph (a) of this section is subject to the requirements in section 517(c) of MAHRA for an owner contribution.

(1) *Addition of significant features.* With respect to significant added features, the required owner contribution will be as proposed by the PAE and approved by HUD, and not to exceed 20 percent of the total cost. Significant added features include the addition of air conditioning (including conversions from window air conditioning to central air conditioning), an elevator, or additional community space.

(2) *Cap on owner contribution.* If a restructuring plan includes additions other than those specified, and the PAE considers the additions significant, the PAE may propose to make those additions subject to the cap on owner contribution. In general, the owner will contribute 3 percent toward the cost of each significant addition. The PAE may propose a lower or higher owner contribution, not to exceed 20 percent, with respect to significant additions.

(3) *Other rehabilitation.* With respect to other rehabilitation, the required owner contribution will be calculated as 20 percent of the total cost of rehabilitation, unless HUD or the PAE determines that a higher percentage is required. The owner contribution must include a reasonable proportion (as determined by HUD) of the total cost of rehabilitation from nongovernmental resources.

(4) *Cooperatives.* The PAE may exempt housing cooperatives from the owner contribution requirement.

* * * * *

■ 13. In § 401.480 revise paragraph (b) and add paragraph (e) to read as follows:

**§ 401.480 Sale or transfer of project.**

* * * * *

(b) *When must the restructuring plan include sale or transfer of the property?* If the owner is determined to be ineligible pursuant to § 401.101 or § 401.403, or if the property is subject to an approved plan of action under the Emergency Low Income Housing Preservation Act of 1987 or the Low Income Housing Preservation and Resident Homeownership Act of 1990, as described in section 524(e)(3) of MAHRA, the property must be sold or transferred as a condition of implementation of a restructuring plan, which must include a condition that the owner sell or transfer the property to a purchaser acceptable to HUD, in accordance with paragraph (c) of this section. Such sale or transfer shall be a condition to the implementation of the Restructuring Plan.

* * * * *

(e) *Tenant endorsement procedure for priority purchaser status.* (1) *Required meeting.* (i) A community-based nonprofit or public agency purchaser requesting tenant endorsement to obtain priority purchaser status must conduct an informational meeting with the tenants of the project to disseminate information about both the endorsement request and the purchaser's plans for the project.

(ii) If the purchaser is acting contemporaneously with the Restructuring Plan, the informational meeting must occur at the second meeting of tenants convened by the PAE to discuss the restructuring plan pursuant to § 401.500(d).

(iii) A representative of the purchasing entity must attend the informational meeting to present its plans for the acquisition and improvement of the project and to respond to questions about the purchaser's plans for the property.

(iv) Tenants shall have the opportunity, but are not to be required, to vote for or against the acquisition at the informational meeting.

(v) For the purpose of obtaining tenant endorsement, a purchaser may conduct additional meetings with tenants in accordance with the notice requirements of paragraphs (e)(2) and (e)(3) of this section.

(2) *Parties who must receive notice.* The purchaser must deliver notice of the informational meeting, and any subsequent meeting, to each tenant household in the project and any tenant organization for the project, and post notices of the meeting in the project.

(3) *Notice contents.* The notice must identify the place, date, and time of the informational meeting, and any subsequent meeting. Include a brief description of the purpose of the meeting and provide a narrative outlining the purchaser's plans for the project, including any request made to HUD for debt relief under § 401.461(b)(5) of the second and any additional mortgage.

(4) *Tenant endorsement.* (i) A purchaser may demonstrate that it is tenant endorsed by submitting documentation to HUD that a majority (51 percent) of the tenant heads of household have given their endorsement in writing. Such documentation may include, but is not limited to, ballots, letters of support, or petitions. The endorsement of tenants who did not attend, or vote at, the informational meeting, or any subsequent meeting, may be sought directly from each of these tenants subsequent to the meeting.

(ii)(A) If the purchaser has made a reasonable effort to obtain the endorsement of a majority (51 percent) of the tenants and the necessary percentage of votes was not obtained, the purchaser may seek HUD approval to obtain endorsement based on a lower percentage of endorsing tenants.

(B) The purchaser must deliver notice to each tenant household that the purchaser is seeking HUD approval of a tenant endorsement based on less than 51 percent of tenant approval and provide tenants with at least 10 days from the date of the notice to submit comments to the purchaser on the approval of endorsement.

(C) The purchaser and/or seller must submit, in writing, to HUD an account of the efforts taken to secure tenant endorsement, the number and percentage of tenants voting for and against endorsement, and any comments received from tenants regarding the approval of endorsement.

(D) HUD will determine whether or not to approve endorsement on the basis of all the information available to HUD and will promptly notify the purchaser of HUD's determination.

■ 14. Revise § 401.500(f)(2) to read as follows:

**§ 401.500 Required notices to third parties and meeting with third parties.**

* * * * *

(f) * * *

(2) Within 10 days after a determination that the Restructuring Plan will not move forward for any reason, HUD or the PAE shall provide notice to affected tenants that describes the reasons for the failure of the Plan to move forward and the availability of tenant-based assistance under § 401.602(c).

■ 15. Revise § 401.645 to read as follows:

**§ 401.645 Owner request to review HUD decision.**

(a) *HUD notice of decision.* (1) HUD will provide notice to the owner of:

(i) A decision that the owner or project is not eligible for the Mark-to-Market program;

(ii) A decision not to offer a proposed Restructuring Commitment to the owner; and

(iii) A decision to offer a proposed Restructuring Commitment. The proposed Restructuring Commitment provided to the owner constitutes the notice of decision for purposes of requesting a review of a HUD decision.

(2) The notice of decision will include the reasons for the decision.

(3) The notice of decision will also notify the owner of the right to request a review of the decision or to cure any deficiencies on which the decision was based; the date by which the review request must be submitted or the deficiencies must be cured, which will be at least 30 days after the date of the notice of decision; and the address to which the review request is to be submitted.

(b) *Review request by owner.* (1) *Written statement.* The review request must specify in writing:

(i) Each item of the decision to which the owner objects;

(ii) The reasons for the owner's objections; and

(iii) All information in support of the objections that the owner wants HUD to consider.

(2) *Scope of information submitted.* HUD will not consider information first submitted to HUD in conjunction with an owner's request for review except for:

(i) Information that could not have been submitted previously; and

(ii) New health and safety information.

(c) *HUD review and final decision.* (1) HUD may expand the scope of review beyond the issues raised by the owner and may review and modify any term within the Restructuring Commitment without regard to whether the owner has raised an objection to that term, including adjustments to rents or expenses as underwritten by the PAE. If HUD does expand the scope of review, HUD will notify the owner of such action and provide an additional 30 days for the owner to raise any additional objections and provide additional information.

(2) Within 30 days of HUD's receipt of the owner's review request and any additional objections and information, HUD will review the request and, using a standard of what is reasonable in light of all of the evidence presented, issue a final decision. The final decision will:

(i) Affirm the notice of decision; or

(ii) Modify the notice of decision and, if applicable, modify the Restructuring Commitment, in which event HUD will issue an amended or restated Restructuring Commitment that incorporates the final decision; or

(iii) Revoke the notice of decision and, if applicable, terminate the Restructuring Commitment and notify the owner that the owner is not eligible for participation in the Mark-to-Market program or that a restructuring of the property is not feasible.

■ 16. Revise § 401.650 to read as follows:

**§ 401.650 When may the owner request an administrative appeal?**

(a) *No review request by owner.* If the owner does not request a review of the notice of decision under § 401.645 or does not execute the proposed Restructuring Commitment within the time provided in the notice of decision, HUD will send a written notice to the owner stating that the notice of decision is HUD's final decision and that the owner has 10 days after receipt of the letter to accept the decision, including a Restructuring Commitment, if applicable, or request an administrative appeal in accordance with § 401.651.

(b) *Upon receipt of final decision.* HUD will send the owner a written notice of the final decision under § 401.645 that will also provide the owner with 10 days to request an administrative appeal of the final decision.

(c) *HUD decision to accelerate the second mortgage.* Upon receipt of notice from HUD of a decision to accelerate the second mortgage under § 401.461(b)(4), the owner may request an administrative appeal in accordance with § 401.651.

■ 17. In § 401.651, revise paragraph (b) to read as follows:

**§ 401.651 Appeal procedures.**

* * * * *

(b) *Written decision.* Within 20 days after the conference, or 20 days after any agreed-upon extension of time for submission of additional materials by or on behalf of the owner, HUD will review the evidence presented for the administrative appeal and, using the standard of whether the determination of the final decision was reasonable, will advise the owner in writing of the decision to terminate, modify, or affirm the original decision. HUD will act, as necessary, to implement the decision, for example, by offering a revised Restructuring Commitment to the owner.

* * * * *

Dated: November 14, 2007.

**Brian D. Montgomery,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. E7–22908 Filed 11–23–07; 8:45 am]

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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. 2602/P.L. 110–118**

To name the Department of Veterans Affairs medical facility in Iron Mountain, Michigan, as the ''Oscar G. Johnson Department of Veterans Affairs Medical Facility''. (Nov. 16, 2007; 121 Stat. 1346)

**S.J. Res. 7/P.L. 110–119**

Providing for the reappointment of Roger W. Sant as a citizen regent of the Board of Regents of the Smithsonian Institution. (Nov. 16, 2007; 121 Stat. 1347)

**S. 2206/P.L. 110–120**

To provide technical corrections to Public Law 109-116 (2 U.S.C. 2131a note) to extend the time period for the Joint Committee on the Library to enter into an agreement to obtain a statue of Rosa Parks, and for other purposes. (Nov. 19, 2007; 121 Stat. 1348)

**Last List November 19, 2007**

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## CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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| 8 | | 4.50 | [3] July 1, 1984 |
| 9 | | 13.00 | [3] July 1, 1984 |
| 10–17 | | 9.50 | [3] July 1, 1984 |
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 2006, through January 1, 2007. The CFR volume issued as of January 6, 2006 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

[10] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2006. The CFR volume issued as of October 1, 2005 should be retained.