



# 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, April 10, 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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Federal Register

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

## FEDERAL ELECTION COMMISSION

### 11 CFR Part 104

[NOTICE 2007–9]

#### Statement of Policy; Safe Harbor for Misreporting Due to Embezzlement

**AGENCY:** Federal Election Commission.

**ACTION:** Statement of policy.

**SUMMARY:** The Commission is issuing a Statement of Policy to announce that it is creating a safe harbor for the benefit of political committees that have certain internal controls in place to prevent misappropriations and associated misreporting. Specifically, the Commission does not intend to seek civil penalties against a political committee for filing incorrect reports due to the misappropriation of committee funds if the committee has the specified safeguards in place.

**EFFECTIVE DATE:** April 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Stoltz, Assistant Staff Director, Audit Division, 999 E Street, NW., Washington, DC 20463, (202) 694–1200.

**SUPPLEMENTARY INFORMATION:** The Commission has encountered a dramatic increase in the number of cases where political committee staff misappropriates committee funds. Misappropriations are often accompanied by the filing of inaccurate disclosure reports with the FEC, leaving committees vulnerable to a FEC enforcement action and potential liability for those reporting errors. In response to the rise in this activity, the Commission has concluded that the following internal controls are minimal safeguards a committee should implement to prevent misappropriations and associated misreporting.

This policy does not impose new legal requirements on political committees; rather it creates a safe harbor. If the following internal controls are in place

at the time of a misappropriation, and the post-discovery steps described below are followed by the committee, the FEC will not seek a monetary penalty on the political committee for filing incorrect reports due to the misappropriation of committee funds.<sup>1</sup> The Commission will also consider the presence of some, but not all, of these practices, or of comparable safeguards, as a mitigating factor in considering any monetary liability resulting from a misappropriation.<sup>2</sup>

#### A. Internal Controls

- All bank accounts are opened in the name of the committee, never an individual, using the committee's Employer Identification Number, not an individual's Social Security Number.
- Bank statements are reviewed for unauthorized transactions and reconciled to the accounting records each month. Further, bank records are reconciled to disclosure reports prior to filing. The reconciliations are done by someone other than a check signer or an individual responsible for handling the committee's accounting.
- Checks in excess of \$1000 are authorized in writing and/or signed by two individuals. Further, all wire transfers are authorized in writing by two individuals. The individuals who may authorize disbursements or sign checks should be identified in writing in the committee's internal policies.
- An individual who does not handle the committee's accounting or have banking authority receives incoming checks and monitors all other incoming receipts. This individual makes a list of all committee receipts and places a restrictive endorsement, such as: For Deposit Only to the Account of the Payee" on all checks.
- If the committee has a petty cash fund, an imprest system<sup>3</sup> is used,

<sup>1</sup> The internal controls set forth here represent the minimum efforts a committee must take to qualify for this safe harbor. The FEC provides additional guidance on internal controls best practices at <http://www.fec.gov/law/policy.shtml#guidance>.

<sup>2</sup> This policy does not absolve or mitigate FEC liability for individuals responsible or complicit in the misappropriations.

<sup>3</sup> An imprest fund is one in which the sum of the disbursements recorded in the petty cash log since

and the value of the petty cash fund should be no more than \$500.

#### B. Post-Discovery of Misappropriation Activity

As soon as a misappropriation is discovered, the political committee:

- Notifies relevant law enforcement of the misappropriation.
- Notifies the FEC of the misappropriation.
- Voluntarily files amended reports to correct any reporting errors due to the misappropriation, as required by the FEC.

This notice represents a general statement of policy announcing the general course of action that the Commission intends to follow. This policy statement does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay in effective date under 5 U.S.C. 553 of the Administrative Procedures Act ("APA"). As such, it does not bind the Commission or any member of the general public. The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and comment are required by the APA or another statute, are not applicable.

Dated: March 22, 2007.

**Robert D. Lenhard,**

*Chairman, Federal Election Commission.*

[FR Doc. E7–6299 Filed 4–4–07; 8:45 am]

**BILLING CODE 6715–01–P**

## FEDERAL ELECTION COMMISSION

### 11 CFR Part 111

[Notice 2007–8]

#### Policy Regarding Self-Reporting of Campaign Finance Violations (Sua Sponte Submissions)

**AGENCY:** Federal Election Commission.

**ACTION:** Statement of Policy.

**SUMMARY:** In order to encourage the self-reporting of violations about which the Commission would not otherwise have learned, the Commission will generally

the last replenishment and the remaining cash always equals the stated amount of the fund. When the fund is replenished the amount of the replenishment equals the amounts recorded since the prior replenishment and should bring the cash balance back to the stated amount. Only one person should be in charge of the fund.

offer penalties between 25% and 75% lower than the Commission would otherwise have sought in identical matters arising by other means. The Commission will also use a new expedited procedure through which the Commission may allow individuals and organizations that self-report violations and that make a complete report of their internal investigation to proceed directly into conciliation prior to the Commission determining whether their conduct may have violated statutes or regulations within its jurisdiction. This policy also addresses various issues that can arise in connection with parallel criminal, administrative or civil proceedings.

**DATES:** Effective April 5, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Mark Shonkwiler, Assistant General Counsel, or April J. Sands, Attorney, Enforcement Division, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:**

**I. Goals and Scope of the Policy**

The Commission periodically receives submissions from persons who self-report statutory or regulatory violations of which the Commission had no prior knowledge. The Commission considers such self-reports (which also are referred to as *sua sponte* submissions) as information ascertained in the normal course of carrying out its supervisory responsibilities pursuant to 2 U.S.C. 437g(a)(2), and may investigate if it determines there is reason to believe a violation has occurred. The Commission also investigates complaints reporting the potentially illegal conduct of another, submitted pursuant to 2 U.S.C. 437g(a)(1), but which also, by implication, provide a basis for investigating the complainant itself.<sup>1</sup> As a general proposition, self-reported matters, when accompanied by full cooperation, will be resolved more quickly and on more favorable terms than identical matters arising by other means (*e.g.*, those arising via external complaints, referrals from other government agencies, or referrals from

<sup>1</sup> If a person who self-reports a violation of the FECA also makes specific allegations as to other persons not joining in the submission, and particularly where the person making the submission seeks to assign primary responsibility for the violations to another person (including an organization's former officers or employees), the Commission, acting through its Office of General Counsel, may advise the self-reporting person that a portion of the relevant materials should be re-submitted as a complaint to which other persons would be allowed to respond prior to any findings by the Commission.

the Commission's Audit or Reports Analysis Divisions).<sup>2</sup>

The Commission recently has seen an increase in self-reported violations, which may be attributable, at least in part, to greater attention being placed on compliance programs for areas of potential organizational liability, and recognition that addressing a problem through self-auditing and self-reporting may help minimize reputational harm. The increase in the number of self-reported matters has highlighted the need to increase the transparency of Commission policies and procedures. Moreover, the Commission seeks to provide appropriate incentives for this demonstration of cooperation and responsibility.

On December 8, 2006, the Commission published a proposed policy statement on self-reporting of violations. See Proposed Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte Submissions*), 71 FR 71090 (December 8, 2006). The comment period ended on January 29, 2007. Two comments were received. One of the comments supported the proposed policy and suggested some minor revisions. The other comment opposed the proposed policy.

This policy provides an overview of the factors that influence the Commission's handling and disposition of self-reported matters. It should be noted that while cooperation in general, and self-reporting in particular, will be considered by the Commission as mitigating factors, they do not excuse a violation of the Act or end the enforcement process. Also, this policy does not confer any rights on any person and does not in any way limit the right of the Commission to evaluate every case individually on its own facts and circumstances.<sup>3</sup>

**II. Self-Reporting of FECA Violations**

Self-reporting of violations typically allows respondents to resolve their civil liability in a manner which has the potential to: (1) Reduce the investigative burden on both the Commission and themselves; (2) demonstrate their acceptance of organizational or personal responsibility and commitment to internal compliance; and (3) conclude their involvement in the Commission's enforcement process on an expedited basis. As a result, a person who brings

<sup>2</sup> When violations are found, FECA requires the Commission to attempt to correct or prevent violations through conciliation agreements before suit may be filed in federal district court.

<sup>3</sup> Some violations, for instance, are subject to a mandatory minimum penalty prescribed by statute. See 2 U.S.C. 437g(a)(6)(C).

to the Commission's attention violations of the FECA and Commission regulations and who cooperates with any resulting investigation will also generally receive appropriate consideration in the terms of an eventual conciliation agreement. For example, the Commission may do one or more of the following:

- Take no action against particular respondents;
- Offer a significantly lower penalty than what the Commission otherwise would have sought in a complaint-generated matter involving similar circumstances or, where appropriate, no civil penalty;
- Offer conciliation before a finding of probable cause to believe a violation occurred, and in certain cases proceed directly to conciliation without the Commission first finding reason to believe that a violation occurred;
- Refrain from making a formal finding that a violation was knowing and willful, even where the available information would otherwise support such a finding;
- Proceed only as to an organization rather than as to various individual agents or, where appropriate, proceed only as to individuals rather than organizational respondents;
- Include language in the conciliation agreement that indicates the level of cooperation provided by respondents and the remedial action taken.

Additionally, in cases where the submission includes privileged or sensitive information, the Commission may work with the submitter to protect privileged information from public disclosure while still allowing the Commission to verify the sufficiency of the submission.

**III. Factors Considered in Self-Reported Matters**

The Commission may take into account various factors in considering how to proceed regarding self-reported violations. In general, more expedited processing and a more favorable outcome will result when the self-reporting party can show that upon discovery of the potential violations, there was an immediate end to the activity giving rise to the violation(s); the respondent made a timely and complete disclosure to the Commission and fully cooperated in the disposition of the matter; and the respondent implemented appropriate and timely corrective measures, including internal safeguards necessary to prevent any recurrence. Further detail as to these factors is supplied below.

### Nature of the Violation

(1) *The type of violation*: Whether the violation was knowing and willful, or resulted from reckless disregard for legal requirements or deliberate indifference to indicia of wrongful conduct; negligent; an inadvertent mistake; or based on the advice of counsel;<sup>4</sup>

(2) *The magnitude of the violation*: Whether the violation resulted from a one-time event or an ongoing pattern of conduct repeated over an extended period of time (and whether there was a history of similar conduct); how many people were involved in or were aware of the violation and the relative level of authority of these people within the organization; whether individuals were coerced into participating in the violation; the amount of money involved either in terms of absolute dollar amount or in terms of the percentage of an entity's activity; and the impact the violation may have had on any federal election;

(3) *The origin of the violation*: Whether the conduct was intended to advance the organization's interests or to defraud the organization for the personal gain of a particular individual; whether there were compliance procedures in place to prevent the type of violation now uncovered and, if so, why those procedures failed to stop or deter the wrongful conduct; and whether the persons with knowledge of the violation were high-level officials in the organization.

### Extent of Corrective Action and New Self-Governance Measures

(4) *Investigative and corrective actions*: Whether the violation immediately ceased upon its discovery; how long it took after discovery of the violation to take appropriate corrective measures, including disciplinary action against persons responsible for any misconduct; whether there was a thorough review of the nature, extent, origins, and consequences of the conduct and related behavior; whether the respondent expeditiously corrected and clarified the public record by making appropriate and timely disclosures as to the source and recipients of any funds involved in a violation; whether a federal political committee promptly made any necessary refunds of excessive or prohibited contributions; and whether an organization or individual respondent waived its claim to refunds

of excessive or prohibited contributions and instructed recipients to disgorge such funds to the U.S. Treasury;

(5) *Post-discovery compliance measures*: Whether there are assurances that the conduct is unlikely to recur; whether the respondent has adopted and ensured enforcement of more effective internal controls and procedures designed to prevent a recurrence of the violation; and whether the respondent provided the Commission with sufficient information for it to evaluate the measures taken to correct the situation and ensure that the conduct does not recur.

### Disclosure and Cooperation

(6) *Full disclosure of the violation to the Commission*: Whether steps were taken upon learning of the violation; whether the disclosure was voluntary or made in recognition that the violation had been or was about to be discovered, or in recognition that a complaint was filed, or was about to be filed, by someone else; and whether a comprehensive and detailed disclosure of the results of its internal review was provided to the Commission in a timely fashion;

(7) *Full cooperation with the Commission*: Whether the respondent promptly made relevant records and witnesses available to the Commission, and made all reasonable efforts to secure the cooperation of relevant employees, volunteers, vendors, donors and other staff without requiring compulsory process; whether the respondent agreed to waive or toll the statute of limitations for activity that previously had been concealed or not disclosed in a timely fashion.

The Commission recognizes that all of the above-listed factors will not be relevant in every instance of self-reporting of potential FECA violations, nor is the Commission required to take all such factors into account. In addition, these factors should not be viewed as an exhaustive list.

### IV. Reduction in Penalties for Self-Reporting Matters

The Commission will generally reduce opening civil penalty offers by between 25% and 75% compared with identical matters arising from a complaint or by other means. The amount of the reduction depends on the facts and circumstances of a particular case. The Commission will consider the factors set forth above.

Absent unusual circumstances, the Commission will grant a civil penalty reduction of 50% to respondents who meet the following criteria:

- Respondents alert the Commission to potential violations before the violation had been or was about to be discovered by any outside party, including the Commission;
- The violation immediately ceased and was promptly reported to the Commission upon discovery;
- Respondents take appropriate and prompt corrective action(s) (e.g., changes to internal procedures to prevent a recurrence of the violation; increased training; disciplinary action where appropriate);
- Respondents amend reports or disclosures to correct past errors, if applicable;
- Any appropriate refunds, transfers, and disgorgements are made and/or waived; and
- Respondents fully cooperate with the Commission in ensuring that the *suu sponte* submission is complete and accurate.

In addition, the Commission may grant a civil penalty reduction of up to 75% to respondents for violations in *suu sponte* submissions based on other factors such as submissions that were uncovered as a result of independent experts that were hired by respondents to conduct a thorough review, investigation or audit, or an equally comprehensive internal review, investigation or audit. In order to receive this reduction, respondents must also meet the above criteria for a 50% reduction and provide the Commission with all documentation of the experts' review, investigation, or audit.<sup>5</sup>

The required scope of the review, investigation or audit will depend on the circumstances. For example, if an organization discovers that an employee, stockholder or member may have reimbursed political contributions with organization funds, the Commission would consider a thorough review to include: Identification of all political contributions made by the suspect employee subsequent to and for at least three years prior to the suspected reimbursement (and extending further if additional suspect contributions are found); a review of contributions by anyone associated with the organization (including, but not limited to, relatives and subordinates) corresponding in time or recipient to the suspected reimbursed contributions; a review of the organization's compensation (especially bonus) and expense reimbursement policies and

<sup>4</sup> A respondent seeking to defend conduct based on advice of counsel may not simultaneously withhold documentary or other evidence supporting that assertion based on the attorney-client privilege.

<sup>5</sup> As discussed above, the Commission will, where appropriate, work with the submitter to protect privileged information from public disclosure.

practices for the relevant periods to identify potential contribution reimbursements. Similarly, if an organization discovers it has misstated financial information on its reports, the Commission would consider a through review to include: An audit reconciling bank and internal financial records with FEC reports for the period in which the error was discovered, any subsequent reporting periods, and prior reporting periods for at least a year prior to the error (and extending further if additional errors are found); a review addressing internal controls and reporting procedures and identifying weaknesses contributing to the errors and remedies for those weaknesses.

The Commission will be the sole arbiter of whether the facts of each case warrant a particular reduction in the penalty. The Commission will generally not give a respondent the benefit of this policy if the respondent is the subject of a criminal or other government investigation. In considering appropriate penalties, the Commission will also consider the presence of aggravating factors, such as knowing and willful conduct or involvement by senior officials of an entity.

#### V. Fast-Track Resolution

The Commission will generally not make a reason-to-believe finding or open a formal investigation for respondents that self-report violations, if: (1) All potential respondents in a matter have joined in a self-reporting submission that acknowledges their respective violations of the FECA; (2) those violations do not appear to be knowing and willful; (3) the submission is substantially complete and reasonably addresses the significant questions or issues related to the violation; and (4) the factual and legal issues are reasonably clear. Accordingly, the Commission is modifying its current practice to allow for an expedited Fast-Track Resolution ("FTR") for a limited number of matters involving self-reported violations. This procedure is available at the Commission's discretion, but may be requested by respondents.

Respondents eligible for the FTR process will meet with the Office of General Counsel to negotiate a proposed conciliation agreement before the Commission makes any formal findings in the matter. Although the Commission is always free to reject or seek modifications to a proposed conciliation agreement, it is expected that this process will allow for more expedited processing of certain types of violations where factual and legal issues are reasonably clear. It also will allow

respondents to resolve certain matters short of the Commission finding that there is reason to believe that a violation has occurred. Examples of matters that might be eligible for such treatment include:

- Matters in which an individual contributor discovers that he or she inadvertently violated the individual aggregate election cycle contribution limit contained in 2 U.S.C. 441a(a)(3);
- Matters in which a political committee seeks to disclose and correct relatively straightforward reporting violations;
- Matters in which a contributor and a political committee jointly seek to resolve their liability for a simple and inadvertent excessive or prohibited contribution; and
- Matters in which the initial self-reporting submission by the respondents is sufficiently thorough that only very limited, if any, follow-up by the Office of the General Counsel is necessary to complete the factual record.

#### VI. Parallel Proceedings

The Commission recognizes that persons self-reporting to the Commission may face special concerns in connection with parallel criminal investigations, State administrative proceedings, and/or civil litigation. The Commission expects that persons who self-report to the Commission will inform the Commission of any existing parallel proceedings. The Commission encourages persons who self-report to the Commission also to self-report related violations to any law enforcement agency with jurisdiction over the activity. This will assist the Commission, where appropriate and possible, in working with other federal, state, and local agencies to facilitate a global and/or contemporaneous resolution of related violations by a self-reporting person. The possibility of such a resolution is enhanced when the self-reporting person expresses a willingness to engage other government agencies that may have jurisdiction over the conduct and to cooperate with joint discovery and disclosure of facts and settlement positions with respect to the different agencies.

In situations where contemporaneous resolution of parallel matters is not feasible, the Commission will consider whether terms contained in a conciliation agreement with the Commission may affect potential liability the same respondent realistically faces from another agency. In appropriate cases, where there has been self-reporting and full cooperation, the Commission may agree to enter into

conciliation without requiring respondents to admit that their conduct was knowing and willful, even where there is evidence that may be viewed as supporting this conclusion. The Commission has followed this practice in several self-reported matters where the organizational respondents promptly self-reported and took comprehensive and immediate corrective action that included the dismissal of all individual corporate officers whose actions formed the basis for the organization's potential knowing and willful violation.

The Commission has the statutory authority to refer knowing and willful violations of the FECA to the Department of Justice for potential criminal prosecution, 2 U.S.C. 437g(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. 2 U.S.C. 437d(a)(9). The Commission will take into consideration the fact of self-reporting in deciding whether to refer a matter. However, the Commission will not negotiate whether it refers, reports, or otherwise discusses information with other law enforcement agencies. Although the Commission cannot disclose information regarding an investigation to the public, it can and does share information on a confidential basis with other law enforcement agencies.

#### VII. Conclusion

The Commission seeks to encourage the self-reporting of violations. To that end, the Commission has adopted this policy that explains that *sua sponte* submissions will, in general, receive more expedited processing and more favorable outcomes than identical matters arising by other means.

This notice represents a general statement of policy announcing the general course of action that the Commission intends to follow. This policy statement does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay in effective date under 5 U.S.C. 553 of the Administrative Procedures Act ("APA"). As such, it does not bind the Commission or any member of the general public. The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and comment are required by the APA or another statute, are not applicable.

Dated: March 27, 2007.

**Robert D. Lenhard,**

*Chairman, Federal Election Commission.*

[FR Doc. E7-6185 Filed 4-4-07; 8:45 am]

BILLING CODE 6715-01-P

## FARM CREDIT ADMINISTRATION

**12 CFR Parts 611, 612, 614, 615, 618, 619, 620, and 630**

RIN 3052-AC19

**Organization; Standards of Conduct and Referral of Known or Suspected Criminal Violations; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; Definitions; Disclosure to Shareholders; Disclosure to Investors in System-Wide and Consolidated Bank Debt Obligations of the Farm Credit System; Effective Date**

**AGENCY:** Farm Credit Administration.

**ACTION:** Announcement of effective date.

**SUMMARY:** The Farm Credit Administration (FCA) published a final rule under parts 611, 612, 614, 615, 618, 619, 620, and 630 on February 2, 2006. This final rule amended our regulations affecting the governance of the Farm Credit System and became effective on April 5, 2006 (71 FR 18168, April 11, 2006), except for the amendments to §§ 611.210(a)(2), 611.220(a)(2)(i) and (ii), 611.325, and 620.21(d)(2). This document announces the effective date of those delayed portions of the rule.

**EFFECTIVE DATE:** The effective date for the amendments to §§ 611.210(a)(2), 611.220(a)(2)(i) and (ii), 611.325, and 620.21(d)(2), published February 2, 2006, at 71 FR 5740, is April 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** Gary Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4232, TTY (703) 883-4434; or Laura D. McFarland, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.  
(12 U.S.C. 2252(a)(9) and (10))

Dated: April 2, 2007.

**Roland E. Smith,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. E7-6357 Filed 4-4-07; 8:45 am]

BILLING CODE 6705-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-27757; Directorate Identifier 2007-NM-030-AD; Amendment 39-15014; AD 2007-07-13]

RIN 2120-AA64

#### **Airworthiness Directives; Gulfstream Aerospace LP Model Galaxy Airplanes and Model Gulfstream 200 Airplanes**

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

**ACTION:** Final rule; request for comments.

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

Avionics and electrical wire harnesses are routed behind the Primary Flight Displays (PFD) tray at the rear of the instrument panel. In some cases, the wire harness has been found to be chafing on the PFD tray. That could result in electrical arcing and shorting and subsequent loss of systems essential for safe flight.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** This AD becomes effective April 20, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 20, 2007.

We must receive comments on this AD by May 7, 2007.

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

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

### Examining the AD Docket

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

#### **FOR FURTHER INFORMATION CONTACT:**

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

#### **SUPPLEMENTARY INFORMATION:**

##### **Streamlined Issuance of AD**

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

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

##### **Discussion**

The Civil Aviation Authority of Israel (CAAI), which is the aviation authority for Israel, has issued Israeli Airworthiness Directive 31-07-01-12, dated February 15, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Avionics and electrical wire harnesses are routed behind the Primary Flight Displays (PFD) tray at the rear of the instrument panel. In some cases, the wire harness has been found to be chafing on the PFD tray. That could result in electrical arcing and shorting and subsequent loss of systems essential for safe flight.

The corrective actions include inspecting the wiring harness for chafing, performing repairs if required; and inspecting the wire harnesses for

proper clearance, and rerouting/relocating wire harnesses to obtain proper clearance if required. You may obtain further information by examining the MCAI in the AD docket.

#### Relevant Service Information

Gulfstream has issued Service Bulletin 200-31-301, dated January 19, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

#### FAA's Determination and Requirements of This AD

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

#### Differences Between the AD and the MCAI or Service Information

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

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

#### FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because avionics and electrical wire harnesses are routed behind the primary flight displays (PFD) tray at the rear of the instrument panel. In some cases, the wire harness has been found to be chafing on the PFD tray. That could result in electrical arcing and shorting and subsequent loss of systems essential for safe flight. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists

for making this amendment effective in fewer than 30 days.

#### Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2007-27757; Directorate Identifier 2007-NM-030-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

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

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**2007-07-13 GULFSTREAM AEROSPACE LP (Formerly Israel Aircraft Industries, Ltd.):** Amendment 39-15014. Docket No. FAA-2007-27757; Directorate Identifier 2007-NM-030-AD.

#### Effective Date

(a) This airworthiness directive (AD) becomes effective April 20, 2007.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Gulfstream Model Galaxy airplanes and Model Gulfstream 200 airplanes, certificated in any category, serial numbers 004 through 056.

#### Subject

(d) Instruments.

#### Reason

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

Avionics and electrical wire harnesses are routed behind the Primary Flight Displays (PFD) tray at the rear of the instrument panel. In some cases, the wire harness has been found to be chafing on the PFD tray. That could result in electrical arcing and shorting and subsequent loss of systems essential for safe flight.

The corrective actions include inspecting the wiring harness for chafing, performing repairs if required; inspecting the wire harnesses for proper clearance, and rerouting/relocating wire harnesses to obtain proper clearance if required.

**Actions and Compliance**

(f) Within 50 flight hours or 1 month, whichever occurs first, after the effective date of this AD, unless already done: Do the actions in paragraphs (f)(1) and (f)(2) of this AD.

(1) Inspect the wiring harness for chafing and perform repairs, as applicable, according to Gulfstream Service Bulletin 200-31-301, dated January 19, 2007.

(2) After doing the inspection and all applicable repairs required by paragraph (f)(1) of this AD, before further flight, inspect to make sure the wire harnesses have proper clearance and reroute/relocate wire harnesses to obtain proper clearance, as applicable, according to Gulfstream Service Bulletin 200-31-301, dated January 19, 2007.

**FAA AD Differences**

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

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Borfritz, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2677; fax (425) 227-1149. Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

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

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

**Related Information**

(h) Refer to MCAI Israeli Airworthiness Directive 31-07-01-12, dated February 15, 2007, and Gulfstream Service Bulletin 200-31-301, dated January 19, 2007, for related information.

**Material Incorporated by Reference**

(i) You must use Gulfstream Service Bulletin 200-31-301, dated January 19, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D-25, Savannah, Georgia 31402-2206.

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

Issued in Renton, Washington, on March 23, 2007.

**Ali Bahrami,**

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

[FR Doc. E7-6263 Filed 4-4-07; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

**[Docket No. FAA-2006-26685; Directorate Identifier 2006-NM-200-AD; Amendment 39-15015; AD 2007-07-14]**

**RIN 2120-AA64**

**Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-135BJ Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-135BJ airplanes. This AD requires modifying the forward and aft auxiliary fuel tanks. This AD results from a fuel system reassessment according to SFAR 88 criteria, which revealed the possibility of sparks due to chafing between the harnesses of the forward and aft auxiliary fuel tanks, between certain harnesses attached to the aircraft structure, or between certain harnesses attached to certain mechanical components. We are issuing this AD to prevent a potential ignition source inside a fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion.

**DATES:** This AD becomes effective May 10, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 10, 2007.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2125; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:****Examining the Docket**

You may examine the airworthiness directive (AD) docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

**Discussion**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-135BJ airplanes. That NPRM was published in the **Federal Register** on December 27, 2006 (71 FR 77629). That NPRM proposed to require modifying the forward and aft auxiliary fuel tanks.

**Comments**

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

**Request To Change Applicability**

Embraer states that the applicability in paragraph (c) of the NPRM specifies the following: "This AD applies to all EMBRAER Model EMB-135BJ airplanes, certificated in any category." Embraer's position is that the applicability statement would be better as follows: "This AD applies to all EMBRAER Model EMB-135BJ airplanes, certificated in any category, as listed in Embraer Service Bulletin 145LEG-28-0022, original issue, dated February 17, 2005."

We agree with Embraer. We have determined that changing the applicability of the AD as the

commenter recommended would reduce the number of airplanes to specify only those that are affected by the AD requirements; we find that all Model EMB-135BJ airplanes are not affected. Therefore, we have changed paragraph (c) of this AD as follows: "This AD applies to EMBRAER Model EMB-135BJ airplanes, certificated in any category; as identified in Embraer Service Bulletin 145LEG-28-0022, dated February 17, 2005."

#### Request To Change Unsafe Condition

Embraer states that paragraph (d) of the NPRM describes the unsafe condition as follows: "This AD results from a report of sparks due to chafing between the harnesses of the forward and aft auxiliary fuel tanks, between certain harnesses attached to the aircraft structure, or between certain harnesses attached to certain mechanical components. We are issuing this AD to prevent a potential ignition source inside a fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion." Embraer would like to clarify that no reports of sparks due to chafing between the harnesses of the forward and aft auxiliary fuel tanks were found in the field. Therefore, Embraer suggests that the FAA rewrite the unsafe condition as follows: "This AD results from a fuel system reassessment according to SFAR 88 criteria, it has been found the possibility of sparks due to chafing between the harnesses of the forward and aft auxiliary fuel tanks, between certain harnesses attached to the aircraft structure, or between certain harnesses attached to certain mechanical components. We are issuing this AD to prevent a potential ignition source inside a fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion."

We agree to rewrite certain language regarding the unsafe condition for the reason provided by Embraer; however, the language Embraer wants changed is not the unsafe condition, it is actually the reason that the unsafe condition occurred. We have changed the reason in the Summary section and paragraph (d) of this AD; in addition, we have clarified the language the commenter provided above as follows: "This AD results from a fuel system reassessment according to SFAR 88 criteria, which revealed the possibility of sparks due to chafing between the harnesses of the forward and aft auxiliary fuel tanks, between certain harnesses attached to the aircraft structure, or between certain

harnesses attached to certain mechanical components."

#### Request for Clarification

Embraer notes that paragraph (f)(1) of the NPRM states: "Modify the forward auxiliary fuel tanks." Embraer would like to clarify that there are two forward auxiliary fuel tanks on the left and right sides. Embraer states that paragraph (f)(1) should be changed for clarification, as follows: "Modify the forward auxiliary fuel tanks on the left and right sides." We agree with Embraer for the reason provided and have changed paragraph (f)(1) accordingly.

#### Request To Refer to Revision 1 of Brazilian Airworthiness Directive 2006-07-03

Embraer notes that the Agência Nacional de Aviação Civil, which is the airworthiness authority for Brazil, has issued Brazilian airworthiness directive 2006-07-03R1, effective January 4, 2007. We infer that Embraer is asking that we refer to the revised Brazilian airworthiness directive in the AD. Revision 1 corrects the part numbers of some bonding jumpers, support assemblies, and transfer line tubes. We agree with Embraer and have revised paragraph (h) of this AD to refer to Revision 1 of the Brazilian airworthiness directive.

#### Conclusion

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

#### Costs of Compliance

This AD affects about 27 airplanes of U.S. registry. The modifications take about 20 work hours per airplane, at an average labor rate of \$80 per work hour. Required parts cost \$2,200 per airplane. Based on these figures, the estimated cost of the modifications for U.S. operators is \$102,600, or \$3,800 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**2007-07-14 Empresa Brasileira de Aeronautica S.A. (EMBRAER):**  
Amendment 39-15015. Docket No. FAA-2006-26685; Directorate Identifier 2006-NM-200-AD.

**Effective Date**

(a) This AD becomes effective May 10, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to EMBRAER Model EMB-135BJ airplanes, certificated in any category; as identified in Embraer Service Bulletin 145LEG-28-0022, dated February 17, 2005.

**Unsafe Condition**

(d) This AD results from a fuel system reassessment according to SFAR 88 criteria, which revealed the possibility of sparks due to chafing between the harnesses of the forward and aft auxiliary fuel tanks, between certain harnesses attached to the aircraft structure, or between certain harnesses attached to certain mechanical components. We are issuing this AD to prevent a potential ignition source inside a fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion.

**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.

**Modifications**

(f) Within 5,000 flight hours after the effective date of this AD: Accomplish the modifications specified in paragraphs (f)(1) and (f)(2) of this AD by doing all the applicable actions in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG-28-0022, dated February 17, 2005.

(1) Modify the forward auxiliary fuel tanks on the left and right sides.

(2) Modify the aft auxiliary fuel tanks on the left and right sides.

**Alternative Methods of Compliance (AMOCs)**

(g)(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) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

**Related Information**

(h) Brazilian airworthiness directive 2006-07-03R1, effective January 4, 2007, also addresses the subject of this AD.

**Material Incorporated by Reference**

(i) You must use EMBRAER Service Bulletin 145LEG-28-0022, dated February 17, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica

S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on March 27, 2007.

**Ali Bahrami,**

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

[FR Doc. E7-6230 Filed 4-4-07; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

**[Docket No. FAA-2006-25965; Directorate Identifier 2006-NM-127-AD; Amendment 39-15013; AD 2007-07-08]**

**RIN 2120-AA64**

**Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes Equipped With General Electric CF6-50 Engines**

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD), which applies to Airbus Model A300 B2 and B4 series airplanes equipped with General Electric CF6-50 engines. That AD currently requires deactivating both thrust reversers and revising the airplane flight manual (AFM) to require performance penalties during certain takeoff conditions to ensure that safe and appropriate performance is achieved for airplanes on which both thrust reversers have been deactivated. This new AD requires one-time inspections of the directional pilot valve (DPV), the rocker arm and associated hardware, and corrective actions if necessary; reactivation of both thrust reversers; and repetitive inspections of the DPV and the associated control mechanism of the thrust reversers for incorrect assembly or excessive wear, and corrective actions if necessary. Accomplishing all of the actions would allow the removal of the AFM limitations in the existing AD. This AD results from reports indicating that the DPV was assembled incorrectly; further investigation revealed excessive wear on

certain correctly assembled DPVs and the associated control mechanism. We are issuing this AD to prevent uncommanded in-flight deployment of a thrust reverser, which could result in reduced controllability of the airplane.

**DATES:** This AD becomes effective May 10, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 10, 2007.

On May 6, 2002 (67 FR 21569, May 1, 2002), the Director of the Federal Register approved the incorporation by reference of Airbus All Operators Telex A300/78A0023, dated April 5, 2002.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC.

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

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

**SUPPLEMENTARY INFORMATION:****Examining the Docket**

You may examine the airworthiness directive (AD) docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

**Discussion**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2002-08-51, amendment 39-12728 (67 FR 21569, May 1, 2002). The existing AD applies to Airbus Model A300 B2 and B4 series airplanes equipped with General Electric CF6-50 engines. That NPRM was published in the **Federal Register** on October 3, 2006 (71 FR 58318). That NPRM proposed to continue to require deactivating both thrust reversers and revising the airplane flight manual (AFM) to require performance penalties during certain takeoff conditions to ensure that safe

and appropriate performance is achieved for airplanes on which both thrust reversers have been deactivated. That NPRM also proposed to require one-time inspections of the directional pilot valve (DPV), the rocker arm and associated hardware, and corrective actions if necessary; reactivation of both thrust reversers; and repetitive inspections of the DPV and the associated control mechanism of the thrust reversers for incorrect assembly or excessive wear, and corrective actions if necessary.

#### Comments

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

#### Request To Change Compliance Times

TradeWinds Airlines asks that we add a grace period of 18 months to the compliance time specified in paragraph (h) of the NPRM. Paragraph (h) specifies doing the actions within 18 months after doing the actions in paragraph (g) of the NPRM. Paragraph (g) of the NPRM refers to service information dated May 29, 2002; therefore, operators may have done the actions more than 18 months ago.

Airbus and ASTAR Air Cargo ask that we extend the 18-month compliance time specified in paragraph (h) of the NPRM, as follows:

ASTAR asks that it be extended to 36 months after doing the actions required by paragraph (g) of the NPRM. ASTAR states that Airbus Service Bulletin A300-78-0025, Revision 01, dated February 16, 2005, is approved under the European Aviation Safety Agency (EASA) authority and states that if Airbus All Operators Telex (AOT) A300-78A0024, dated May 29, 2002, is accomplished, the inspection is to be done every 36 months or 8,000 flight hours, whichever occurs first. ASTAR believes that if Airbus AOT A300-78A0024 is accomplished, it meets the initial inspection intent of Airbus Service Bulletin A300-78-0025, and a repeat interval of 8,000 flight hours is required, as stated in Direction Générale de l'Aviation Civile (DGAC) French airworthiness directive F-2005-208, dated December 21, 2005 (which is a parallel AD for the specified actions). ASTAR notes that, since paragraph (g) of the NPRM requires accomplishing Airbus AOT 78A0024, the compliance time specified in paragraph (h) of the NPRM should be 8,000 flight hours. ASTAR adds that this change would align the NRPM with DGAC airworthiness directive F-2005-208 and

European Aviation Safety Agency (EASA) approval of Airbus Service Bulletin A300-78-0025. ASTAR suggests that paragraph (h) of the NPRM be changed as follows: "Within 36 months after accomplishing paragraph (g) of this AD: Do a detailed inspection of the DPV and the associated control mechanism of the thrust reverser for incorrect assembly or excessive wear \* \* \*."

Airbus states that the compliance time specified in paragraph (h) of the NPRM is not the same as the one provided in the referenced service bulletin and in French airworthiness directive F-2005-208. Airbus notes that the compliance time specifies: "For a/c on which AOT 78A0024 is not accomplished: perform ISB at the earliest opportunity without exceeding 18 months. Repeat inspection every 8000FH." And, "For a/c on which AOT 78A0024 is accomplished: repetitive inspection using ISB must not exceed 8000FH after initial inspection (iaw AOT), then every 8000FH." Airbus adds that, in French airworthiness directive F-2005-208, the initial inspection in accordance with Airbus Service Bulletin A300-78-0025 is mandated with 18 months only for aircraft on which AOT A300-78A0024 has not been accomplished. Airbus notes that, as long as the FAA AD mandates accomplishment of the AOT as initial inspection (paragraph (g) of this AD), it considers accomplishment of Airbus Service Bulletin A300-78-0025 within 18 months an additional constraint which was not originally recommended in Airbus Service Bulletin A300-78-0025 or French airworthiness directive F-2005-208. Airbus concludes that, based on these comments, paragraph (h) should mandate Airbus Service Bulletin A300-78-0025 for repetitive inspections, with intervals not exceeding 8,000 flight hours after the initial inspection (in accordance with paragraph (g) of the NPRM).

We agree to extend the compliance time specified in paragraph (h) of this AD to within 36 months after the effective date of this AD, or within 8,000 flight hours after accomplishing the actions required by paragraph (g) of this AD, whichever is first, for the reasons provided.

#### Request To Clarify Intent of AD

ASTAR asks for clarification if the intent of the NPRM is not to allow operation of the aircraft with one thrust reverser inoperative by using Minimum Equipment List (MEL) relief nor special ferry flights if discrepancies are found during inspection. ASTAR notes that, as stated in paragraph (h) of the NPRM, the

aircraft must have applicable corrective actions before further flight. ASTAR also notes that the Airbus service bulletin requires inspection of the DPV by an approved workshop, which in most cases means a serviceable DPV will need to be installed during each inspection.

To clarify, the intent of this AD is to require the reactivation of both thrust reversers after certain actions required by this AD are accomplished. It is not our intent to prohibit use of the relief provided by the Master Minimum Equipment List (MMEL) in the case of one or more thrust reversers being inoperative. After reactivating the thrust reversers, an airplane may be operated with one or more thrust reversers inoperative in accordance with the MMEL. We have revised paragraph (h) of the AD to include this clarification.

Concerning the use of special flight permits: On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to special flight permits. Therefore, an AD will address special flight permits only if they are not allowed, or only allowed with specific limitations. It is not our intent to restrict the use of special flight permits, and this AD specifies no such restriction. We have not changed the AD in this regard.

#### Request To Incorporate/Publish Certain Information

The Modification and Replacement Parts Association (MARPA) states that, frequently, airworthiness directives are based on service information originating with the type certificate holder or its suppliers. MARPA adds that manufacturer service documents are privately authored instruments generally having copyright protection against duplication and distribution. MARPA notes that when a service document is incorporated by reference into a public document, such as an airworthiness directive, it loses its private, protected status and becomes a public document. MARPA adds that if a service document is used as a mandatory element of compliance, it should not simply be referenced, but should be incorporated into the regulatory document. MARPA states that, by definition, public laws must be public, which means they cannot rely upon private writings, especially when the private writings originate in a foreign country. MARPA notes that since the interpretation of a document is a question of law and not fact, a service document not incorporated by reference

will not be considered in a legal finding of the meaning of an airworthiness directive. MARPA is concerned that the failure to incorporate essential service information could result in a court decision invalidating the airworthiness directive.

MARPA adds that incorporated-by-reference service documents should be made available to the public by publication in the Docket Management System (DMS), keyed to the action that incorporates them. MARPA notes that the stated purpose of the incorporation by reference method is brevity, to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals; traditionally, "affected individuals" means aircraft owners and operators, who are generally provided service information by the manufacturer. MARPA adds that a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA notes that this new class includes maintenance and repair organizations, component servicing and repair shops, parts purveyors and distributors, and organizations manufacturing or servicing alternatively certified parts under section 21.303 ("Replacement and modification parts") of the Federal Aviation Regulations (14 CFR 21.303). MARPA adds that the distribution to owners may, when the owner is a financing or leasing institution, not actually reach the persons responsible for accomplishing the airworthiness directive. Therefore, MARPA asks that the service documents deemed essential to the accomplishment of the NPRM be incorporated by reference into the regulatory instrument, and published in the DMS.

We understand MARPA's comment concerning incorporation by reference. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the documents necessary for the accomplishment of the requirements mandated by this AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

In regard to MARPA's request to post service bulletins on the Department of

Transportation's DMS, we are currently in the process of reviewing issues surrounding the posting of service bulletins on the DMS as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. We have not changed the AD in this regard.

#### Explanation of Change to Applicability

We have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

#### Conclusion

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

#### Costs of Compliance

This AD affects about 30 airplanes of U.S. registry.

The actions that are required by AD 2002-08-51 and retained in this AD take about 3 work hours per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the currently required actions is \$7,200, or \$240 per airplane.

The new inspection and reactivation procedures specified in Airbus AOT A300-78A0024 take about 9 work hours per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the new inspection and reactivation specified in this AD for U.S. operators is \$21,600, or \$720 per airplane.

The new inspections specified in Airbus Service Bulletin A300-78-0025 take about 7 work hours per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the new inspections specified in this AD for U.S. operators is \$16,800, or \$560 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39-12728 (67 FR 21569, May 1, 2002) and by adding the following new airworthiness directive (AD):

**2007-07-08 AIRBUS:** Amendment 39-15013. Docket No. FAA-2006-25965; Directorate Identifier 2006-NM-127-AD.

#### Effective Date

(a) This AD becomes effective May 10, 2007.

#### Affected ADs

(b) This AD supersedes AD 2002-08-51.

#### Applicability

(c) This AD applies to Airbus Model A300 B-2 and B-4 series airplanes, certificated in any category, equipped with General Electric CF6-50 engines.

#### Unsafe Condition

(d) This AD results from reports indicating that the directional pilot valve (DPV) was assembled incorrectly; further investigation revealed excessive wear on certain correctly assembled DPVs and the associated control mechanism. We are issuing this AD to prevent uncommanded in-flight deployment of a thrust reverser, which could result in 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.

#### Restatement of Requirements of AD 2002-08-51:

##### Thrust Reverser Deactivation and Airplane Flight Manual (AFM) Revision

(f) Within 72 clock hours after May 6, 2002 (the effective date of AD 2002-08-51), accomplish paragraphs (f)(1) and (f)(2) of this AD.

(1) Deactivate both thrust reversers according to Airbus All Operators Telex A300/78A0023, dated April 5, 2002.

(2) Revise the Limitations Section of the AFM to include the following (this may be accomplished by inserting a copy of this AD into the AFM):

“When the runway is wet or contaminated, reduce by five percent the corrected acceleration-stop distance resulting from the airplane flight manual takeoff performance analysis.

(Note: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).)”

#### New Requirements of This AD:

##### Inspections and Corrective Actions

(g) Within 6 months after the effective date of this AD: Do the actions specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD in consecutive order, in accordance with the procedures specified in Airbus All Operators Telex (AOT) A300-78A0024, dated May 29, 2002, which ends the requirements in paragraph (f) of this AD.

(1) Do a detailed inspection of the DPV on each thrust reverser for incorrect assembly, incorrect diameter, or excessive wear, by doing all the applicable actions, including all applicable corrective actions. All applicable corrective actions must be done before further flight.

(2) Do a detailed inspection of the rocker arm of the DPV for excessive wear by doing all the applicable actions, including all applicable corrective actions. All applicable corrective actions must be done before further flight.

(3) Reactivate both thrust reversers and do a one-time operational test before further flight.

**Note 1:** Airbus AOT A300-78A0024, dated May 29, 2002, refers to Middle River Aircraft Systems CF6-50 Alert Service Bulletin 78A3040, Revision 2, dated June 18, 2004 (including Honeywell Service Bulletin 121332-78-1620, Revision 2, dated June 18, 2004), as an additional source of service information for accomplishing the inspections.

**Note 2:** For the purposes of this AD, a detailed inspection is: “An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.”

##### Repetitive Inspections/Corrective Actions

(h) Within 36 months after the effective date of this AD, or within 8,000 flight hours after accomplishing the actions required by paragraph (g) of this AD, whichever is first: Do a detailed inspection of the DPV and the associated control mechanism of the thrust reverser for incorrect assembly or excessive wear, by doing all the applicable actions, including all applicable corrective actions, in accordance with Airbus Service Bulletin A300-78-0025, Revision 01, excluding Appendix 01, dated February 16, 2005. All applicable corrective actions must be done before further flight; however, the affected thrust reverser may be deactivated and the airplane operated in accordance with the limitations of the MMEL for operations with one or more thrust reversers inoperative. Repeat the inspection thereafter at intervals not to exceed 8,000 flight hours.

**Note 3:** Airbus Service Bulletin A300-78-0025, Revision 01, dated February 16, 2005, refers to Middle River Aircraft Systems Component Maintenance Manual 78-31-06, Revision 10, dated May 31, 2005, as an additional source of service information for replacing defective components.

##### Actions Accomplished Previously

(i) Inspections and corrective actions done before the effective date of this AD in accordance with Airbus Service Bulletin A300-78-0025, dated July 21, 2004, are acceptable for compliance with the corresponding requirements of paragraph (h) of this AD.

##### Alternative Methods of Compliance (AMOCs)

(j)(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) AMOCs approved previously in accordance with AD 2002-08-51, are not approved as AMOCs with this AD.

(3) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

#### Related Information

(k) French airworthiness directives 2002-293(B), dated June 12, 2002, and F-2005-208, dated December 21, 2005, also address the subject of this AD.

#### Material Incorporated by Reference

(l) You must use Airbus All Operators Telex A300-78A0024, dated May 29, 2002; Airbus Service Bulletin A300-78-0025, Revision 01, excluding Appendix 01, dated February 16, 2005; and Airbus All Operators Telex A300/78A0023, dated April 5, 2002; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Airbus All Operators Telex A300-78A0024, dated May 29, 2002; and Airbus Service Bulletin A300-78-0025, Revision 01, excluding Appendix 01, dated February 16, 2005; in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. (The document number and date of Airbus All Operators Telex A300-78A0024, are indicated only on the first page; no other page of the document contains this information.)

(2) On May 6, 2002 (67 FR 21569, May 1, 2002), the Director of the Federal Register approved the incorporation by reference of Airbus All Operators Telex A300/78A0023, dated April 5, 2002.

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

Issued in Renton, Washington, on March 26, 2007.

#### Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-6229 Filed 4-4-07; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

Docket No. FAA-2006-25153; Airspace  
Docket No. 06-AWP-10

RIN 2120-AA66

**Amendment to Class D Airspace;  
Broomfield, CO**

AGENCY: Federal Aviation  
Administration (FAA), DOT.

ACTION: Final rule; technical  
amendment.

**SUMMARY:** This technical amendment corrects a final rule published in the **Federal Register** on August 11, 2006 (71 FR 46076), Docket No. FAA-2006-25153, Airspace Docket No. 06-AWP-10. In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. Also, the corresponding dates that refer to the Order should state “\* \* \* September 1, 2006, and effective September 15, 2006 \* \* \*”, instead of “\* \* \* September 1, 2005, and effective September 15, 2005”. This technical amendment corrects those errors.

**EFFECTIVE DATE:** 0901 UTC, April 5, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Tameka Bentley, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267-8783.

**SUPPLEMENTARY INFORMATION:**

**History**

On August 11, 2006, a final rule was published in the **Federal Register**, Docket No. FAA-2006-25153, Airspace Docket No. 06-AWP-10, that amended Title 14 Code of Federal Regulations part 71 by amending Class D Airspace; Broomfield, CO (71 FR 46076). In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. In addition, the corresponding dates that refer to the Order are incorrect. Instead of “\* \* \* September 1, 2005, and effective September 15, 2005”, the dates should read “\* \* \* September 1, 2006, and effective September 15, 2006 \* \* \*”.

**Amendment to Final Rule**

■ Accordingly, pursuant to the authority delegated to me, the reference to FAA Order 7400.9 for Docket No. FAA-2006-25153, Airspace Docket No. 06-AWP-10, as published in the **Federal Register** on August 11, 2006 (71 FR 46076), is corrected as follows:

■ On page 46076, column 1, (from the bottom, counting up) lines 3 and 4, and column 2, (from the bottom, counting up) lines 5, 6 and 8, amend the language to read:

**§ 71.1 [Amended]**

\* \* \* \* \*  
“\* \* \* FAA Order 7400.9P” instead of  
“FAA Order 7400.9N \* \* \*”.

\* \* \* \* \*  
“\* \* \* September 1, 2006, and  
effective September 15, 2006 \* \* \*”  
instead of “\* \* \* September 1, 2005,  
and effective September 15, 2005  
\* \* \*”.

\* \* \* \* \*

Issued in Washington, DC, March 23, 2007.

**Edith V. Parish,**

*Manager, Airspace and Rules.*

[FR Doc. E7-6302 Filed 4-4-07; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

[Docket No. FAA-2006-24243; Airspace  
Docket No. 06-AWP-11]

RIN 2120-AA66

**Revocation of Class D Airspace; Elko,  
NV**

AGENCY: Federal Aviation  
Administration (FAA), DOT.

ACTION: Final rule; technical  
amendment.

**SUMMARY:** This technical amendment corrects a final rule published in the **Federal Register** on July 18, 2006 (71 FR 40651), Docket No. FAA-2006-24243, Airspace Docket No. 06-AWP-11. In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. Also, the corresponding dates that refer to the Order should state “\* \* \* September 1, 2006 and effective September 15, 2006 \* \* \*” instead of “\* \* \* September 1, 2005, and effective September 16, 2005”. This technical amendment corrects those errors.

**EFFECTIVE DATE:** 0901 UTC, April 5, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51,

subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Tameka Bentley, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267-8783.

**SUPPLEMENTARY INFORMATION:**

**History**

On July 18, 2006, a final rule was published in the **Federal Register**, Docket No. FAA-2006-24243, Airspace Docket No. 06-AWP-11, that amended Title 14 Code of Federal Regulations part 71 by revoking Class D Airspace; Elko, NV (71 FR 40651). In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. In addition, the corresponding dates that refer to the Order are incorrect. Instead of “\* \* \* September 1, 2005, and effective September 16, 2005”, the dates should read “\* \* \* September 1, 2006, and effective September 15, 2006 \* \* \*”.

**Amendment to Final Rule**

■ Accordingly, pursuant to the authority delegated to me, the reference to FAA Order 7400.9 for Docket No. FAA-2006-24243, Airspace Docket No. 06-AWP-11, as published in the **Federal Register** on July 18, 2006 (71 FR 40651), is corrected as follows:

■ On page 40652, column 1, lines 20, 21, and 22, and column 3, lines 28, 30 and 31, amend the language to read:

**§ 71.1 [Amended]**

\* \* \* \* \*

“\* \* \* FAA Order 7400.9P \* \* \*”  
instead of “\* \* \* FAA Order 7400.9N  
\* \* \*”

“\* \* \* September 1, 2006, and  
effective September 15, 2006 \* \* \*”  
instead of “\* \* \* September 1, 2005,  
and effective September 16, 2005  
\* \* \*”

Issued in Washington, DC, March 23, 2007.

**Edith V. Parish,**

*Manager, Airspace and Rules.*

[FR Doc. E7-6296 Filed 4-4-07; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2006-23866; Airspace Docket No. 06-ASO-3]

RIN 2120-AA66

**Establishment of Class D and E Airspace, Amendment of Class E Airspace; Leesburg, FL**

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This technical amendment corrects a final rule published in the **Federal Register** on August 1, 2006 (71 FR 43354), Docket No. FAA-2006-23866, Airspace Docket No. 06-ASO-3. In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. Also, the corresponding dates that refer to the Order should state “\* \* \* September 1, 2006, and effective September 15, 2006 \* \* \*” instead of “\* \* \* September 1, 2005, and effective September 16, 2005”. This technical amendment corrects those errors.

**EFFECTIVE DATE:** 0901 UTC, April 5, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Tameka Bentley, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

**SUPPLEMENTARY INFORMATION:****History**

On August 1, 2006, a final rule was published in the **Federal Register**, Docket No. FAA-2006-23866, Airspace Docket No. 06-ASO-3, that amended Title 14 Code of Federal Regulations part 71 by establishing Class D and E Airspace, and amending Class E Airspace; Leesburg, FL (71 FR 43354). In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. In addition, the corresponding dates that refer to the Order are incorrect. Instead of “\* \* \* September 1, 2005, and effective September 16, 2005”, the dates should read “\* \* \* September 1, 2006, and effective September 15, 2006 \* \* \*”

**Amendment to Final Rule**

■ Accordingly, pursuant to the authority delegated to me, the reference to FAA Order 7400.9 for Docket No. FAA-2006-23866, Airspace Docket No. 06-ASO-3, as published in the **Federal Register** on August 1, 2006 (71 FR 43354), is corrected as follows:

■ On page 43354, column 2, lines 19 and 20, and column 3, lines 18, 20 and 21, amend the language to read:

**§ 71.1 [Amended]**

“\* \* \* FAA Order 7400.9P” instead of “FAA Order 7400.9N \* \* \*”

“\* \* \* September 1, 2006, and effective September 15, 2006 \* \* \*” instead of “\* \* \* September 1, 2005, and effective September 16, 2005 \* \* \*”

Issued in Washington, DC, March 23, 2007.

**Edith V. Parish,**

*Manager, Airspace and Rules.*

[FR Doc. E7-6298 Filed 4-4-07; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2006-24467; Airspace Docket No. 06-ANM-2]

RIN 2120-AA66

**Revision of Class E Airspace; Eagle, CO**

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This technical amendment corrects a final rule published in the **Federal Register** on August 11, 2006 (71 FR 46077), Docket No. FAA-2006-24467, Airspace Docket No. 06-ANM-2. In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. Also, the corresponding dates that refer to the Order should state “\* \* \* September 1, 2006, and effective September 15, 2006 \* \* \*” instead of “\* \* \* September 1, 2005, and effective September 15, 2005”. This technical amendment corrects those errors.

**EFFECTIVE DATE:** 0901 UTC, April 5, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:**

Tameka Bentley, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

**SUPPLEMENTARY INFORMATION:****History**

On August 11, 2006, a final rule was published in the **Federal Register**, Docket No. FAA-2006-24467, Airspace Docket No. 06-ANM-2, that amended Title 14 Code of Federal Regulations part 71 by revising Class E Airspace; Eagle, CO (71 FR 46077). In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. In addition, the corresponding dates that refer to the Order are incorrect. Instead of “\* \* \* September 1, 2005, and effective September 15, 2005”, the dates should read “\* \* \* September 1, 2006, and effective September 15, 2006”.

**Amendment to Final Rule**

■ Accordingly, pursuant to the authority delegated to me, the reference to FAA Order 7400.9 for Docket No. FAA-2006-24467, Airspace Docket No. 06-ANM-2, as published in the **Federal Register** on August 11, 2006 (71 FR 46077), is corrected as follows:

■ On page 46078, column 1, lines 39, 40, and 41, and column 2, lines 34, 36, and 37, amend the language to read:

**§ 71.1 [Amended]**

\* \* \* \* \*

“\* \* \* FAA Order 7400.9P” instead of “FAA Order 7400.9N \* \* \*”

“\* \* \* September 1, 2006, and effective September 15, 2006 \* \* \*” instead of “September 1, 2005, and effective September 15, 2005 \* \* \*”

\* \* \* \* \*

Issued in Washington, DC, March 23, 2007.

**Edith V. Parish,**

*Manager, Airspace and Rules.*

[FR Doc. E7-6297 Filed 4-4-07; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2006-25252; Airspace Docket No. 06-AWP-12]

RIN 2120-AA66

**Revocation of Class E2 Surface Area; Elko, NV**

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This technical amendment corrects a final rule published in the **Federal Register** on July 18, 2006 (71 FR 40653), Docket No. FAA-2006-25252, Airspace Docket No. 06-AWP-12. In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. Also, the corresponding dates that refer to the Order should state “\* \* \* September 1, 2006, and effective September 15, 2006 \* \* \*” instead of “\* \* \* September 1, 2005, and effective September 16, 2005 \* \* \*”. This technical amendment corrects those errors.

**EFFECTIVE DATE:** 0901 UTC, April 5, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Tameka Bentley, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

**SUPPLEMENTARY INFORMATION:****History**

On July 18, 2006, a final rule was published in the **Federal Register**, Docket No. FAA-2006-25252, Airspace Docket No. 06-AWP-12, that amended Title 14 Code of Federal Regulations part 71 by revoking Class E2 Surface Area; Elko, NV (71 FR 40653). In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. In addition, the corresponding dates that refer to the Order are incorrect. Instead of “\* \* \* September 1, 2005, and effective September 16, 2005 \* \* \*”, the dates should read “September 1, 2006, and effective September 15, 2006 \* \* \*”.

**Amendment to Final Rule**

■ Accordingly, pursuant to the authority delegated to me, the reference to FAA Order 7400.9 for Docket No. FAA-2006-25252, Airspace Docket No. 06-AWP-12, as published in the **Federal Register** on July 18, 2006 (71 FR 40653), is corrected as follows:

■ On page 40653, column 3, (from the bottom, counting up) lines 18, and 19, and on page 40654, column 2, (from the bottom, counting up) lines 11, 12 and 14, amend the language to read:

**§ 71.1 [Amended]**

\* \* \* \* \*  
“\* \* \* FAA Order 7400.9P” instead of “FAA Order 7400.9N \* \* \*”

“\* \* \* September 1, 2006, and effective September 15, 2006 \* \* \*” instead of “\* \* \* September 1, 2005, and effective September 16, 2005 \* \* \*”

\* \* \* \* \*

Issued in Washington, DC, March 23, 2007.

**Edith V. Parish,**

*Manager, Airspace and Rules.*

[FR Doc. E7-6295 Filed 4-4-07; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2006-24858; Airspace Docket No. 06-ASO-8]

RIN 2120-AA66

**Establishment of Class E Airspace; Mooresville, NC**

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This technical amendment corrects a final rule published in the **Federal Register** on August 1, 2006 (71 FR 43355), Docket No. FAA-2006-24858, Airspace Docket No. 06-ASO-8. In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. Also, the corresponding dates that refer to the Order should state “\* \* \* September 1, 2006, and effective September 15, 2006 \* \* \*” instead of “\* \* \* September 1, 2005, and effective September 16, 2005”. This technical amendment corrects those errors.

**EFFECTIVE DATE:** 0901 UTC, April 5, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51,

subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Tameka Bentley, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

**SUPPLEMENTARY INFORMATION:****History**

On August 1, 2006, a final rule was published in the **Federal Register**, Docket No. FAA-2006-24858, Airspace Docket No. 06-ASO-8, that amended Title 14 Code of Federal Regulations part 71 by establishing Class E Airspace; Mooresville, NC (71 FR 43355). In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. In addition, the corresponding dates that refer to the Order are incorrect. Instead of “\* \* \* September 1, 2005, and effective September 16, 2005”, the dates should read “\* \* \* September 1, 2006, and effective September 15, 2006 \* \* \*”.

**Amendment to Final Rule**

■ Accordingly, pursuant to the authority delegated to me, the reference to FAA Order 7400.9 for Docket No. FAA-2006-24858, Airspace Docket No. 06-ASO-8, as published in the **Federal Register** on August 1, 2006 (71 FR 43355), is corrected as follows:

■ On page 43356, column 1, lines 19, and 20, and column 2, lines 17, 19 and 20, amend the language to read:

**§ 71.1 [Amended]**

\* \* \* \* \*

“\* \* \* FAA Order 7400.9P” instead of “FAA Order 7400.9N \* \* \*”.

“\* \* \* September 1, 2006, and effective September 15, 2006 \* \* \*” instead of “\* \* \* September 1, 2005, and effective September 16, 2005 \* \* \*”.

\* \* \* \* \*

Issued in Washington, DC, March 23, 2007.

**Edith V. Parish,**

*Manager, Airspace and Rules.*

[FR Doc. E7-6300 Filed 4-4-07; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2006-24234; Airspace Docket No. 06-AWP-5]

RIN 2120-AA66

**Amendment to Class E Airspace; Provo, UT**

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This technical amendment corrects a final rule published in the **Federal Register** on August 1, 2006 (71 FR 43355), Docket No. FAA-2006-24234, Airspace Docket No. 06-AWP-5. In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9O. The correct reference is FAA Order 7400.9P. This technical amendment corrects those errors.

**EFFECTIVE DATE:** 0901 UTC, April 5, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Tameka Bentley, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267-8783.

**SUPPLEMENTARY INFORMATION:****History**

On August 1, 2006, a final rule was published in the **Federal Register**, Docket No. FAA-2006-24234, Airspace Docket No. 06-AWP-5 that amended Title 14 Code of Federal Regulations part 71 by amending Class E Airspace; Provo, UT (71 FR 43355). In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9O. The correct reference is FAA Order 7400.9P.

**Amendment to Final Rule**

■ Accordingly, pursuant to the authority delegated to me, the reference to FAA Order 7400.9 for Airspace Docket No. FAA-2006-24234, Airspace Docket No. 06-AWP-5, as published in the **Federal Register** on August 1, 2006 (71 FR 43355), is corrected as follows:

■ On page 43355, column 1, (from the bottom, counting up) line 6, and column 2, (from the bottom, counting up) line 3, amend the language to read:

**§ 71.1 [Amended]**

\* \* \* \* \*  
 “FAA Order 7400.9P” instead of  
 “FAA Order 7400.9O”.  
 \* \* \* \* \*

Issued in Washington, DC, March 23, 2007.

**Edith V. Parish,**

*Manager, Airspace and Rules.*

[FR Doc. E7-6301 Filed 4-4-07; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 91**

RIN No. 2120-AJ03

[Docket No. FAA-2007-27602; SFAR 107]

**Prohibition Against Certain Flights Within the Territory and Airspace of Somalia**

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

**ACTION:** Final rule.

**SUMMARY:** This action prohibits flight operations below flight level 200 within the territory and airspace of Somalia by all: (1) U.S. air carriers; (2) U.S. commercial operators; (3) operators of U.S. registered aircraft except when such operators are foreign air carriers; and (4) persons exercising the privileges of a U.S. airman certificate except if the flight is on behalf of a foreign air carrier. The FAA finds this action necessary to prevent a potential hazard to persons and aircraft engaged in such flight operations.

**EFFECTIVE DATE:** This action is effective March 30, 2007, shall remain in effect until further notice.

**FOR FURTHER INFORMATION CONTACT:** David Catey, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. *Telephone:* (202) 267-3732 or 267-8166.

**SUPPLEMENTARY INFORMATION:****Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. The FAA is responsible for the safety of flight in the United States and for the safety of U.S.-registered aircraft and U.S. operators throughout the world. Additionally, the FAA is responsible for issuing rules affecting the safety of air commerce and national security. Title 49 United States Code (U.S.C.) Section 40101(d)(1) provides that the

Administrator shall consider the following, among others, as being in the public interest: assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Title 49 U.S.C. Section 44701(a)(5) provides the FAA with broad authority to prescribe regulations governing the practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security.

**Background**

The United States has aviation safety and national security interest concerns regarding the safety of flight operations in Somalia. In addition, it has concerns for the individuals affected by this SFAR who may overfly Somalia below flight level (FL) 200 or land anywhere in Somalia except when necessary due to an inflight emergency.

On 9 March, the fuselage of an IL-76 aircraft supporting the deployment of Ugandan peacekeeping forces to Somalia exploded and caught fire just above the landing gear while on final approach to Mogadishu International Airport. There is evidence to support the possibility that the aircraft may have been struck by a rocket propelled grenade (RPG) while 2.5-3 kilometers off the coast of Somalia at approximately 120 meters in altitude. The aircraft was able to land at Mogadishu, but was heavily damaged, although no serious injuries occurred to any crew or passengers. While there have been conflicting accounts regarding the cause of the explosion or fire, we believe that the attack on the IL-76 was probably caused by an RPG. We cannot rule out the possibility that some individuals also have access to man-portable air defense systems (MANPADS) that could be used against those persons covered by this SFAR. On 23 March, an IL-76 aircraft crashed after taking off from Mogadishu airport, killing all the passengers and crew. The aircraft brought engineers and parts to the IL-76 crippled in the 9 March incident. Although the cause of the crash is under investigation, there is a possibility the IL-76 was downed by a MANPADS missile or RPG. These incidents occurred days after unknown individuals mortared the airport at Mogadishu, causing minimal damage. Consequently, the FAA has determined that it is not safe to overfly Somali territory below FL 200. Furthermore, it is in the United States' national security interests for those covered by this SFAR not to engage in flight operations within the territory and airspace of Somalia.

### Prohibition Against Certain Flights Within the Territory and Airspace of Somalia

On the basis of the above information, and in furtherance of my responsibilities to promote the safety of flight of civil aircraft in air commerce and to issue aviation rules in the national security interests of the United States, I have determined that action by the FAA is necessary to prevent the injury to U.S. operators or the loss of certain U.S.-registered aircraft conducting flights in the territory and airspace of Somalia below FL 200. Accordingly, I am ordering a prohibition on all flight operations within the territory and airspace of Somalia below FL 200 by all United States air carriers, U.S. commercial operators, and all persons exercising the privileges of an airman certificate issued by the FAA unless such a person is engaged in the operation of a U.S.-registered aircraft for a foreign air carrier. This prohibition also applies to the operation of U.S.-registered aircraft below FL 200 in the territory and airspace of Somalia except where the operator is a foreign air carrier. This action is necessary to prevent an undue hazard to aircraft and to protect persons and property on board those aircraft. SFAR 107 will remain in effect until further notice.

Because the circumstances described herein warrant immediate action by the FAA, I find that notice and public comment under 5 U.S.C. 553(b)(3)(B) are impracticable and contrary to the public interest. Further I find that good cause exists under 5 U.S.C. 553(d) for making this rule effective immediately upon issuance. I also find that this action is fully consistent with the obligations under Title 49 U.S.C. Section 40105 to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

### Approval Based on Authorization Request of an Agency of the United States Government

If a department or agency of the U.S. Government determines that it has a critical need to engage any person covered under paragraph 1 of SFAR 107, including a U.S. air carrier or a commercial operator in a charter for transportation of civilian or military passengers or cargo where the total capacity of the aircraft is used solely for that charter while the aircraft operates within Somalia, the U.S. Government agency may request FAA approval of the operation on behalf of the person covered under paragraph 1 of the SFAR.

That request for approval must be made in writing, in the form of a letter under the signature of a senior official of that department or agency, and sent to the FAA Associate Administrator for Aviation Safety (AVS). *That request for approval must include:*

1. A written contract between the other U.S. Government agency and persons covered under paragraph 1 of SFAR 107 for specific flight operations, which includes terms and conditions detailing how the operations are to be conducted;

2. A plan approved by the U.S. Government agency describing how, in light of the need for and risk of the proposed operation, the threats to the operation will be mitigated, including the threats associated with MANPADS (FAA review of the plan does not constitute FAA acceptance or approval of the plan); and,

3. Any other information requested by the FAA.

The FAA will review the request for approval submitted by the U.S. Government agency to determine whether that agency has addressed the threats to the proposed operations, including the threats associated with MANPADS. If the FAA determines that the U.S. Government agency has addressed those issues, an approval may be issued as described under the "Approval Conditions" discussion that follows.<sup>1</sup> FAA approval of the operation under paragraph 3 of SFAR 107 does not relieve the operator of the responsibility of ensuring compliance with all rules and regulations of other U.S. Government agencies that may apply to the operation, including, but not limited to the Transportation Security Regulations issued by the Transportation Security Administration, Department of Homeland Security.

### Approval Conditions

If the FAA approves the requested operation, AVS will issue an approval directly to the carrier through the use of Operations Specifications (large air carriers) or a letter of authorization (general aviation operations). AVS will send a letter to the authorizing agency that stipulates the specific conditions under which the FAA approves the air carrier or other covered persons for the requested operations in Somalia. *Specifically:*

<sup>1</sup>The process set forth above outlines the conditions under which the FAA anticipates that approvals of flight operations into Somalia may be granted at this time. Any requests for exemption under 14 CFR part 11 will require exceptional circumstances beyond those presently contemplated by this approval process.

1. Any approval will stipulate those procedures and conditions that limit to the greatest degree possible the risk to the operator while still allowing the operator to achieve its operational objectives;

2. Any approval will specify that the operation is not eligible for coverage through a premium war risk insurance policy issued by the FAA under section 44302 of chapter 443 of Title 49 of the United States Code. A request for such coverage will not be granted; and

3. If the operator already is covered by a premium war risk insurance policy issued by the FAA,<sup>2</sup> the applicant will be required to request the FAA to issue an endorsement to its premium war risk insurance policy that specifically excludes coverage for any operations where the flight level will be lower than FL 200 over Somalia, including a flight plan that contemplates landing or taking off from Somali territory. The operator must expressly waive any claims against the U.S. Government in the event of injury, death or loss resulting from any such operation as a condition for an approval or an exemption issued in accordance with paragraph 3 of SFAR 107. If approved by the FAA, such an endorsement to the premium war risk insurance policy must be issued and effective prior to the effective date of the approval. Additionally, the operator must notify the FAA in writing of its agreement to release the U.S. Government from all claims and liabilities, as well as its agreement to indemnify the U.S. Government with respect to any third party claims and liabilities relating to any and all events arising from or related to any such operation.

If the operation includes the carriage of passengers, the operator must obtain signed statements from each passenger that—(1) contain a statement that the passenger knowingly accepts the risk of the operation and consents to that risk, and (2) releases the U.S. Government from all claims and liabilities relating to any and all events arising from or related to any such operation.

### Regulatory Analysis

This rulemaking action is taken under an emergency situation within the meaning of Section 6(a)(3)(d) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation

<sup>2</sup>Coverage under FAA premium war risk insurance policies is suspended, as a condition of the premium war risk policy, if an operation is covered by non-premium war risk insurance through a contract with an agency of the U.S. Government under section 44305 of chapter 443 of Title 49 of the U.S. Code.

under Paragraph 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. It is not a significant rule within the meaning of the Executive Order and DOT's policies and procedures. No regulatory analysis or evaluation accompanies the rule.

The FAA certifies that this rule will not have a substantial impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, as amended. It also will have no impact on international trade and creates no unfunded mandate for any entity.

#### Availability of This Final Rule

You can get an electronic copy using the Internet by:

- (1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (<http://dms.dot.gov/search>);
- (2) Visiting the FAA's Regulations and Policies web page at [http://www.faa.gov/regulations\\_policies](http://www.faa.gov/regulations_policies); or
- (3) Accessing the Government Printing Office's web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

#### Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA in the FAA's Web page at [http://www.faa.gov/regulations\\_policies/rulemaking/sbre\\_act/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

#### List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Somalia.

#### The Amendment

■ For the reasons set forth above, the Federal Aviation Administration amends 14 CFR part 91 as follows:

#### PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531; Articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

■ 2. In part 91, Special Federal Aviation Regulation (SFAR) No. 107 is added to read as follows:

#### Special Federal Aviation Regulation No. 107—Prohibition Against Certain Flights Within the Territory and Airspace of Somalia

1. *Applicability.* This rule applies to the following persons:

- (a) All U.S. air carriers or commercial operators;
- (b) All persons exercising the privileges of an airman certificate issued by the FAA except such persons operating U.S.-registered aircraft for a foreign air carrier; and
- (c) All operators of aircraft registered in the United States except where the operator of such aircraft is a foreign air carrier.

2. *Flight prohibition.* Except as provided below, or in paragraphs 3 and 4 of this SFAR, no person described in paragraph 1 may conduct flight operations within the territory and airspace of Somalia below flight level (FL) 200.

(a) Overflights of Somalia may be conducted above FL 200 subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Somalia.

(b) Flights departing from countries adjacent to Somalia whose climb performance will not permit operation above FL 200 prior to entering Somali airspace may operate at altitudes below FL 200 within Somalia to the extent necessary to permit a climb above FL 200, subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Somalia.

3. *Permitted operations.* This SFAR does not prohibit persons described in section 1 from conducting flight operations within the territory and airspace below FL 200 of Somalia when such operations are authorized either by another agency of the United States Government with the approval of the FAA or by an exemption issued by the Administrator.

4. *Emergency situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this SFAR to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to

the requirements of Title 14 CFR parts 119, 121, or 135, each person who deviates from this rule must, within 10 days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons for it.

5. *Expiration.* This Special Federal Aviation Regulation will remain in effect until further notice.

Issued in Washington, DC on March 30, 2007.

**Robert A. Sturgell,**

*Deputy Administrator.*

[FR Doc. 07-1709 Filed 4-3-07; 8:45 am]

**BILLING CODE 4910-13-P**

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#### DEPARTMENT OF COMMERCE

#### International Trade Administration

#### DEPARTMENT OF THE INTERIOR

#### 15 CFR Part 303

[Docket No. 0612243019-7062-02]

RIN: 0625-AA72

#### Changes in the Insular Possessions Watch, Watch Movement and Jewelry Programs 2006

**AGENCIES:** Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

**ACTION:** Final rule.

**SUMMARY:** The Departments of Commerce and the Interior (the Departments) amend their regulations governing watch duty-exemption allocations and the watch and jewelry duty-refund benefits for producers in the United States insular possessions (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands). The rule amends certain regulations by updating the maximum total value of watch components per watch that are eligible for duty-free entry into the United States under the insular program, further clarifying the definition of creditable and non-creditable wages and fringe benefits, providing more details about the calculation of mid-year and annual duty-refund and verification process, and making minor editorial changes.

**DATES:** This rule is effective May 7, 2007.

**FOR FURTHER INFORMATION CONTACT:** Faye Robinson, (202) 482-3526, same address as above.

**SUPPLEMENTARY INFORMATION:** The Departments of Commerce and the Interior (the Departments) issue this rule to amend their regulations governing watch duty-exemption allocations and the watch and jewelry duty-refund benefits for producers in the United States insular possessions (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands). The background information and purpose of this rule is found in the preamble to the proposed rule (72 FR 3083, January 24, 2007) and is not repeated here.

#### Amendments

We amend § 303.14(b)(3) by raising the maximum total value of watch components per watch and watch movement that are eligible for duty-free entry into the U.S., from \$800 to \$3,000 per watch and from \$35 to \$300 per watch movement due to recent increases in the price of gold.

The rule amends §§ 303.1(c) and 303.15(b) to reflect that the duty-refunds may now be obtained on any articles that entered the customs territory of the United States duty paid except for any article containing a material which is the product of a country to which column 2 rates of duty apply, pursuant to Public Law 108-429. The rule further amends § 303.1(c) by removing the erroneous reference to “Headnote 6” and adding “additional U.S. note 5 to chapter 91 of the HTSUS” in its place.

We also amend § 303.2(a)(8) to correct a minor typographical error by adding the closing parenthesis at the end of the sentence and amend § 303.2(a)(10) by changing “watch components” to “watch movements” to more accurately define the kind of component.

Further, we amend §§ 303.2(a)(13), 303.2(a)(13)(ii), 303.2(a)(13)(ii)(A), 303.2(a)(13)(ii)(B), 303.2(a)(14), 303.2(a)(14)(ii), 303.2(a)(14)(ii)(A), 303.2(a)(14)(ii)(B), 303.16(a)(9), 303.16(a)(9)(ii), 303.16(a)(9)(ii)(A), 303.16(a)(9)(ii)(B), 303.16(a)(10), 303.16(a)(10)(ii), 303.16(a)(10)(ii)(A) and 303.16(a)(10)(ii)(B) to further clarify which wages, health insurance, life insurance and pension benefits are creditable in the Departments’ calculation of the duty-refund benefits and which are not.

The rule also amends §§ 303.16(a)(9)(i)(C) and (a)(10)(i)(D) by clarifying that two program producers may, under certain circumstances, work on the same unit of jewelry and receive creditable wages and fringe benefits proportionally if both producers

demonstrate that they have met all the qualifications of the regulations and have records sufficient for the Departments’ verification. However, a non-program jewelry producer may not work together with a program jewelry producer on the manufacturing of a single article of jewelry and receive creditable wages and benefits.

Further the rule amends §§ 303.12(a)(1), 303.14(c), 303.19(a)(1) and 303.20(b) to provide further details about the calculation of the mid-year duty-refund and annual duty-refund. The rule also modifies the criteria for the calculation of the annual duty-refund to include health insurance, life insurance and pension benefits, pursuant to Public Law 108-429 and modifies the criteria for the calculation of the mid-year duty refund.

We amend the heading to § 303.5(b) to reflect that only verified data is used in the calculation of the duty-exemptions and duty-refunds. Also, we amend §§ 303.5(b)(5) and 303.17(b)(6) to clarify that the payroll information that should be available for use in the verification includes time cards for each employee. The rule amends §§ 303.5(c) and 303.17(c) to specify that all data must be available at the time of the annual verification and that the Departments will not consider further data after the verification for the particular year has been completed.

The rule amends §§ 303.13(b) and 303.21(b) by changing “post office address” to “address” because some producers might not have post office addresses and express mail carriers often will not deliver to a post office address.

Finally, the rule amends §§ 303.2(b)(5) and 303.16(b)(3) by adding “duty paid” so it will be clearer that the refund of duties is specifically on items that entered into the Customs territory of the United States “duty paid”.

ITA received three comments in response to the proposed rule and request for comments. The commenters supported the provisions that were proposed and suggested no changes. As a result we are adopting the proposed regulations without change.

#### Administrative Law Requirements

Regulatory Flexibility Act. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chief Counsel for Regulation at the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule would not have a significant economic impact on a substantial number of small entities. The factual

basis for this certification was published in the proposed rule and is not repeated here. No comments were received regarding the economic impact of this rule on small entities. As a result, a final regulatory flexibility analysis is not required and has not been prepared.

Paperwork Reduction Act. This rulemaking does not contain revised collection of information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Collection activities are currently approved by the Office of Management and Budget under control numbers 0625-0040 and 0625-0134.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information unless it displays a currently valid OMB control number.

E.O. 12866. It has been determined that the rulemaking is not significant for purposes of Executive Order 12866.

#### List of Subjects in 15 CFR Part 303

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and record keeping requirements, Virgin Islands, Watches and Jewelry.

■ For reasons set forth above, the Departments amend 15 CFR Part 303 as follows:

#### PART 303—WATCHES, WATCH MOVEMENTS AND JEWELRY PROGRAMS

■ 1. The authority citation for 15 CFR Part 303 continues to read as follows:

**Authority:** Pub. L. 97-446, 96 Stat. 2331 (19 U.S.C. 1202, note); Pub. L. 103-465, 108 Stat. 4991; Pub. L. 94-241, 90 Stat. 263 (48 U.S.C. 1681, note); Pub. L. 106-36, 113 Stat. 167; Pub. L. 108-429, 118 Stat. 2582.

#### § 303.1 [Amended]

■ 2. Section 303.1 is amended as follows:

■ A. Remove “on watches and watch movements and parts (except discrete watch cases) imported into the customs territory of the United States.” from the first sentence of paragraph (c) and add “on any article imported into the customs territory of the United States duty paid except for any article containing a material which is the product of a country to which column 2 rates of duty apply.” in its place.

■ B. Remove “Headnote 6” from the last sentence in paragraph (c) and add “additional U.S. note 5 to chapter 91 of

the Harmonized Tariff Schedule of the United States, HTSUS” in its place.

■ 3. Section 303.2 is amended as follows:

■ A. Remove “American Samoa and the Northern Mariana Islands.” from the only sentence in paragraph (a)(8) and add “American Samoa and the Northern Mariana Islands.” in its place.

■ B. Remove “watch components” from the only sentence in paragraph (a)(10) and add “watch movements” in its place.

■ C. Amend paragraph (a)(13) introductory text by removing “wages” and adding “wages and associated” in its place.

■ D. Add one new sentence at the end of paragraph (a)(13)(ii) introductory text as set forth below.

■ E. Add one new sentence at the end of paragraph (a)(13)(ii)(A) as set forth below.

■ F. Add one new sentence at the end of paragraph (a)(13)(ii)(B) as set forth below.

■ G. Revise paragraph (a)(14) introductory text as set forth below.

■ H. Add one new sentence at the end of paragraph (a)(14)(ii) introductory text as set forth below.

■ I. Add one new sentence at the end of paragraph (a)(14)(ii)(A) as set forth below.

■ J. Add one new sentence at the beginning of paragraph (a)(14)(ii)(B) as set forth below.

■ K. Remove “United States during” from the second sentence of paragraph (b)(5) and add “United States duty paid during” in its place.

§ 303.2 Definitions and forms.

(a) \* \* \*

(13) \* \* \*

(ii) \* \* \* Only during the time employees are earning creditable wages are they entitled to health and life insurance duty refund benefits under the program.

(A) \* \* \* Only during the time employees are earning creditable wages are they entitled to health and life insurance duty refund benefits under the program.

(B) \* \* \* Only during the time employees are earning creditable wages are they entitled to pension duty refund benefits under the program.

\* \* \* \* \*

(14) Non-creditable wages and associated non-creditable fringe benefits ineligible for the duty refund benefit include, but are not limited to, the following:

\* \* \* \* \*

(ii) \* \* \* Any health and life insurance costs during the time an

employee is not earning creditable wages.

(A) \* \* \* Any health and life insurance costs during the time an employee is not earning creditable wages.

(B) Any pension benefits that were not based on associated creditable wages. \* \* \*

\* \* \* \* \*

■ 4. Section 303.5 is amended as follows:

■ A. Revise the section heading to read as set forth below.

■ B. Remove “allocation shall” from the first sentence of paragraph (b) introductory text and add “allocation or duty-refund certificate shall” in its place.

■ C. Remove “payroll, production records” from paragraph (b)(5) and add “payroll, including time cards, production records” in its place.

■ D. Remove the last sentence of paragraph (c) and add two sentences in its place as set forth below.

§ 303.5 Application for annual allocations of duty-exemptions and duty-refunds.

\* \* \* \* \*

(c) \* \* \* It is the responsibility of each program producer to make the appropriate data available to the Departments’ officials for the calendar year for which the annual verification is being performed and no further data, from the calendar year for which the audit is being completed, will be considered for benefits at any time after the audit has been completed. In the event of discrepancies between the application and substantiating data before the audit is complete, the Secretaries shall determine which data will be used in the calculation of the duty refund and allocations.

\* \* \* \* \*

§ 303.12 [Amended]

■ 5. Section 303.12 is amended as follows:

■ A. Remove “creditable wages paid during” from the second sentence in paragraph (a)(1) and add “creditable wages, determined from the wages as reported on the employer’s first two quarterly federal tax returns (941–SS), paid during” in its place.

■ B. Remove “duty refund will remain the same.” from the fifth sentence in paragraph (a)(1) and add “duty refund will be based on verified creditable wages, duty-free shipments into the customs territory of the United States, creditable health insurance, life insurance and pension benefits and the duty differential, if watch tariffs have been reduced during the calendar year.” in its place.

§ 303.13 [Amended]

■ 6. Section 303.13 is amended by removing “post office address” from the first sentence of paragraph (b) introductory text and adding “address” in its place.

■ 7. Section 303.14 is amended as follows:

■ A. Revise the section heading to read as set forth below.

■ B. In paragraph (b)(3), remove “35” and add “300” in its place; and remove “800” and add “3,000” in its place.

■ C. Revise paragraph (c) to read as follows.

§ 303.14 Allocation factors, duty refund calculations and miscellaneous provisions.

\* \* \* \* \*

(c) Calculation of the value of the mid-year production incentive certificates. (1) The value of each producer’s certificate shall equal the producer’s average creditable wage per unit shipped during the first six months of the calendar year multiplied by the sum of:

(i) The number of units shipped up to 300,000 units times a factor of 90%; plus

(ii) Incremental units shipped up to 450,000 units times a factor of 85%; plus

(iii) Incremental units shipped up to 600,000 units times a factor of 80%; plus

(iv) Incremental units shipped up to 750,000 units times a factor of 75%.

(2) Calculation of the value of the annual production incentive certificates. The value of each producer’s certificate shall equal the producer’s average creditable benefit per unit based on creditable wages, health insurance, life insurance and pension benefits plus any duty differential, if applicable, averaged from the amount of duty free units shipped during the calendar year multiplied by the sum of the following to obtain the total verified amount of the annual duty-refund per company. This amount would then be adjusted by deducting the amount of the mid-year duty-refund already issued.

(i) The number of units shipped up to 300,000 units times a factor of 90%; plus

(ii) Incremental units shipped up to 450,000 units times a factor of 85%; plus

(iii) Incremental units shipped up to 600,000 units times a factor of 80%; plus

(iv) Incremental units shipped up to 750,000 units times a factor of 75%.

(3) The Departments may make adjustments for these data in the manner set forth in § 303.5(c).

\* \* \* \* \*

**§ 303.15 [Amended]**

■ 8. Section 303.15 is amended by removing “on watches and watch movements and parts (except discrete watch cases) imported into the customs territory of the United States.” from the first sentence of paragraph (b) and adding “on any article imported into the customs territory of the United States duty paid except for any article containing a material which is the product of a country to which column 2 rates of duty apply.” in its place.

■ 9. Section 303.16 is amended as follows:

■ A. Amend paragraph (a)(9) introductory text by removing “wages and creditable fringe benefits” and adding “wages and associated creditable fringe benefits and creditable duty differentials” in its place.

■ B. Remove “two producers” from the first sentence of paragraph (a)(9)(i)(C) and add “two program producers” in its place.

■ C. Add one new sentence at the end of paragraph (a)(9)(ii) introductory text as set forth below.

■ D. Add one new sentence at the end of paragraph (a)(9)(ii)(A) as set forth below.

■ E. Add one new sentence at the end of paragraph (a)(9)(ii)(B) as set forth below.

■ F. Revise paragraph (a)(10) introductory text as set forth below.

■ G. Add one new sentence at the end of paragraph (a)(10)(ii) introductory text as set forth below.

■ H. Add one new sentence at the end of paragraph (a)(10)(ii)(A) as set forth below.

■ I. Add one new sentence at the beginning of paragraph (a)(10)(ii)(B) as set forth below.

■ J. Remove “working on the premises of the company office and” from the first sentence of paragraph (a)(10)(i)(D) and add “working on the premises of the company office; wages paid to employees working with a non-program producer to create a single piece of HTSUS heading 7113 jewelry whether or not it entered the United States free of duty; and” in its place.

■ K. Remove “United States during” from the second sentence of paragraph (b)(3) and add “United States duty paid during” in its place.

**§ 303.16 Definitions and forms.**

(a) \* \* \*

(9) \* \* \*

(ii) \* \* \* Only during the time employees are earning creditable wages are they entitled to health and life insurance duty refund benefits under the program.

(A) \* \* \* Only during the time employees are earning creditable wages are they entitled to health and life insurance duty refund benefits under the program.

(B) \* \* \* Only during the time employees are earning creditable wages are they entitled to pension duty refund benefits under the program.

\* \* \* \* \*

(10) Non-creditable wages and associated non-creditable fringe benefits ineligible for the duty refund benefit include, but are not limited to, the following:

\* \* \* \* \*

(ii) \* \* \* Any health and life insurance costs during the time an employee is not earning creditable wages.

(A) \* \* \* Any health and life insurance costs during the time an employee is not earning creditable wages.

(B) Any pension benefits that were not based on associated creditable wages. \* \* \*

\* \* \* \* \*

■ 10. Section 303.17 is amended as follows:

■ A. Revise the section heading to read as set forth below.

■ B. Remove “payroll, production records” from paragraph (b)(6) and add “payroll, including time cards, production records” in its place.

■ D. Remove the last sentence of paragraph (c) and add two sentences in its place as set forth below.

**§ 303.17 Application for annual duty-refunds.**

\* \* \* \* \*

(c) \* \* \* It is the responsibility of each program producer to make the appropriate data available to the Departments’ officials for the calendar year for which the annual verification is being performed and no further data, from the calendar year for which the audit is being completed, will be considered for benefits at any time after the audit has been completed. In the event of discrepancies between the application and substantiating data before the audit is complete, the Secretaries shall determine which data will be used in the calculation of the duty refund and allocations.

\* \* \* \* \*

**§ 303.19 [Amended]**

■ 11. Section 303.19 is amended as follows:

■ A. Remove “creditable wages paid during” from the second sentence in paragraph (a)(1) and add “creditable wages, determined from the wages as

reported on the employer’s first two quarterly federal tax returns (941–SS), paid during” in its place.

■ B. Remove “duty refund will remain the same.” from the fifth sentence in paragraph (a)(1) and add “duty refund will be based on verified creditable wages, duty-free shipments into the customs territory of the United States, creditable health insurance, life insurance and pension benefits and the duty differential, if watch tariffs have been reduced during the calendar year.” in its place

■ 12. Section 303.20 is amended as follows:

■ A. Revise the section heading to read as set forth below.

■ B. Revise paragraph (b) to read as follows.

**§ 303.20 Duty refund calculations and miscellaneous provisions.**

\* \* \* \* \*

(b) *Calculation of the value of the mid-year production incentive certificates.* (1) The value of each producer’s certificate shall equal the producer’s average creditable wage per unit shipped during the first six months of the calendar year multiplied by the sum of:

(i) The number of units shipped up to 300,000 units times a factor of 90%; plus

(ii) Incremental units shipped up to 450,000 units times a factor of 85%; plus

(iii) Incremental units shipped up to 600,000 units times a factor of 80%; plus

(iv) Incremental units shipped up to 750,000 units times a factor of 75%.

(2) *Calculation of the value of the annual production incentive certificates.* The value of each producer’s certificate shall equal the producer’s average creditable benefit per unit based on creditable wages, health insurance, life insurance and pension benefits plus any duty differential, if applicable, averaged from the amount of duty free units shipped during the calendar year multiplied by the sum of the following to obtain the total verified amount of the annual duty-refund per company. This amount would then be adjusted by deducting the amount of the mid-year duty-refund already issued.

(i) The number of units shipped up to 300,000 units times a factor of 90%; plus

(ii) Incremental units shipped up to 450,000 units times a factor of 85%; plus

(iii) Incremental units shipped up to 600,000 units times a factor of 80%; plus

(iv) Incremental units shipped up to 750,000 units times a factor of 75%.

(3) The Departments may make adjustments for these data in the manner set forth in § 303.17(c).

\* \* \* \* \*

**§ 303.21 [Amended]**

■ 13. Section 303.21 is amended by removing “post office address” from the first sentence of paragraph (b) and adding “address” in its place.

Dated: March 26, 2007.

**David Spooner,**

*Assistant Secretary for Import Administration, Department of Commerce.*

Dated: March 22, 2007.

**Edgar Johnson,**

*Acting Director for Insular Affairs, Department of the Interior.*

[FR Doc. 07-1578 Filed 4-4-07; 8:45 am]

BILLING CODE 3510-DS-P and 4310-93-P

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 101**

[Docket No. RM04-12-000]

**Accounting and Financial Reporting for Public Utilities Including RTOs; Correction**

March 30, 2007.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule: notice of correction.

**SUMMARY:** On December 16, 2005, the Commission issued a Final Rule amending the accounting and financial reporting requirements for public utilities. The Commission is issuing a notice correcting certain plant-related line references in one of its schedules for FERC Form No. 1 and correcting the quarterly and annual designations for three other schedules that were all included in Appendix B of the order.

**DATES:** Effective March 30, 2007.

**FOR FURTHER INFORMATION CONTACT:** John Okrak (Technical Information), Division of Financial Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8280.

**SUPPLEMENTARY INFORMATION:**

**Notice of Correction**

On December 16, 2005, the Commission issued Order No. 668,<sup>1</sup> amending the accounting and financial reporting requirements for public utilities. Certain general plant-related line references included on page 206 of the FERC Form No. 1 that were not revised by Order No. 668 were inadvertently deleted from the revised Electric Plant In Service schedule

<sup>1</sup> *Accounting and Financial Reporting for Public Utilities Including RTOs*, Order No. 668, FERC Stats. & Regs. ¶ 31,199 (2005) 113 FERC ¶ 61,276, reh'g denied, Order No. 668-A, FERC Stats. & Regs. ¶ 31,215 (2006), reh'g denied, 115 FERC ¶ 61,080 (2006), 70 FR 77627 (December 30, 2005).

included in Appendix B to the order. Additionally, pages 231, 331, and 400a were inadvertently designated as annual reporting schedules in Appendix B, instead of their proper designation as both quarterly and annual reporting schedules.

This notice of correction corrects page 206 of the FERC Form No. 1 to include those general plant-related line references inadvertently omitted from the revised schedule.<sup>2</sup> Additionally, pages 231, 331, and 400a are revised to properly designate them as both quarterly and annual reporting schedules. The corrected pages 206, 231, 331 and 400a are attached to this notice of correction as Appendix A.

**Philis J. Posey,**

*Deputy Secretary.*

BILLING CODE 6717-01-P

<sup>2</sup> *Lines inadvertently omitted were line 95, (398) Miscellaneous Equipment; line 96, Subtotal (Enter Total of lines 86 thru 95); line 97, (399) Other Tangible Property; line 98, (399.1) Asset Retirement Costs for General Plant and line 99, Total General Plant (Enter Total of lines 96, 97 and 98).*

**APPENDIX A**

Name of Respondent		This Report is: (1) <input type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____
<b>ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106) (Continued)</b>				
Line No.	Accounts (a)		Balance Beginning of Year (b)	Additions (c)
47	<b>3. TRANSMISSION PLANT</b>			
48	(350) Land and Land Rights			
49	(352) Structures and Improvements			
50	(353) Station Equipment			
51	(354) Towers and Fixtures			
52	(355) Poles and Fixtures			
53	(356) Overhead Conductors and Devices			
54	(357) Underground Conduit			
55	(358) Underground Conductors and Devices			
56	(359) Roads and Trails			
57	(359.1) Asset Retirement Costs for Transmission Plant			
58	TOTAL Transmission Plant (Enter Total of lines 48 thru 57)			
59	<b>4. DISTRIBUTION PLANT</b>			
60	(360) Land and Land Rights			
61	(361) Structures and Improvements			
62	(362) Station Equipment			
63	(363) Storage Battery Equipment			
64	(364) Poles, Towers, and Fixtures			
65	(365) Overhead Conductors and Devices			
66	(366) Underground Conduit			
67	(367) Underground Conductors and Devices			
68	(368) Line Transformers			
69	(369) Services			
70	(370) Meters			
71	(371) Installations on Customer Premises			
72	(372) Leased Property on Customer Premises			
73	(373) Street Lighting and Signal Systems			
74	(374) Asset Retirement Costs for Distribution Plant			
75	TOTAL Distribution Plant (Enter Total of lines 60 thru 74)			
76	<b>5. REGIONAL TRANSMISSION AND MARKET OPERATION PLANT</b>			
77	(380) Land and Land Rights			
78	(381) Structures and Improvements			
79	(382) Computer Hardware			
80	(383) Computer Software			
81	(384) Communication Equipment			
82	(385) Miscellaneous Regional Transmission and Market Operation Plant			
83	(386) Asset Retirement Costs for Regional Transmission and Market Operation Plant			
84	TOTAL Transmission and Market Operation Plant (Enter Total of lines 77 thru 83)			
85	<b>6. GENERAL PLANT</b>			
86	(389) Land and Land Rights			
87	(390) Structures and Improvements			
88	(391) Office Furniture and Equipment			
89	(392) Transportation Equipment			
90	(393) Stores Equipment			
91	(394) Tools, Shop and Garage Equipment			
92	(395) Laboratory Equipment			
93	(396) Power Operated Equipment			
94	(397) Communication Equipment			
95	(398) Miscellaneous Equipment			
96	SUBTOTAL (Enter Total of lines 86 thru 95)			
97	(399) Other Tangible Property			
98	(399.1) Asset Retirement Costs for General Plant			
99	TOTAL General Plant (Enter Total of lines 96, 97 and 98)			
100	TOTAL (Accounts 101 and 106)			
101	(102) Electric Plant Purchased (See Instruction 8)			
102	(Less) (102) Electric Plant Sold (See Instruction 8)			
103	(103) Experimental Plant Unclassified			

104	TOTAL Electric Plant in Service (Enter Total of lines 100 thru 103)		
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FERC FORM NO. 1 (REV. 03-07)

Page 206

Name of Respondent	This Report is: (1) <input type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____		
<b>Transmission Service and Generation Interconnection Study Costs</b>					
<p>1. Report the particulars (details) called for concerning the costs incurred and the reimbursements received for performing transmission service and generator interconnection studies.                  2. List each study separately.                  3. In column (a) provide the name of the study.                  4. In column (b) report the cost incurred to perform the study at the end of period.                  5. In column (c) report the account charged with the cost of the study.                  6. In column (d) report the amounts received for reimbursement of the study costs at end of period.                  7. In column (e) report the account credited with the reimbursement received for performing the study.</p>					
Line No.	Description (a)	Costs Incurred During Period (b)	Account Charged (c)	Reimbursements Received During the Period (d)	Account Credited With Reimbursement (e)

**Transmission Studies**

1					
2					
3					
4					
5					
6					
7					
8					
9					
10					

**Generation Studies**

11					
12					
13					
14					
15					
16					
17					
18					
19					
20					

Name of Respondent	This Report is: (1) <input type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____
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**TRANSMISSION OF ELECTRICITY BY ISO/RTOs**

1. Report in Column (a) the Transmission Owner receiving revenue for the transmission of electricity by the ISO/RTO.
2. Use a separate line of data for each distinct type of transmission service involving the entities listed in Column (a).
3. In Column (b) enter a Statistical Classification code based on the original contractual terms and conditions of the service as follows: FNO – Firm Network Service for Others, FNS – Firm Network Transmission Service for Self, LFP – Long-Term Firm Point-to-Point Transmission Service, OLF – Other Long-Term Firm Transmission Service, SFP – Short-Term Firm Point-to-Point Transmission Reservation, NF – Non-Firm Transmission Service, OS – Other Transmission Service and AD- Out-of-Period Adjustments. Use this code for any accounting adjustments or "true-ups" for service provided in prior reporting periods. Provide an explanation in a footnote for each adjustment. See General Instruction for definitions of codes.
4. In column (c) identify the FERC Rate Schedule or tariff Number, on separate lines, list all FERC rate schedules or contract designations under which service, as identified in column (b) was provided.
5. In column (d) report the revenue amounts as shown on bills or vouchers.
6. Report in column (e) the total revenues distributed to the entity listed in column (a).

Line No.	Payment Received By (Transmission Owner Name)	Statistical Classification	FERC Rate Schedule or Tariff Number	Total Revenue By Rate Schedule or Tariff	Total Revenue
	(a)	(b)	(c)	(d)	(e)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
	<b>TOTAL</b>				

Name of Respondent		This Report is: (1) <input type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission		Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____					
<b>MONTHLY ISO/RTO TRANSMISSION SYSTEM PEAK LOAD</b>										
<p>(1) Report the monthly peak load on the respondent's transmission system. If the Respondent has two or more power systems which are not physically integrated, furnish the required information for each non-integrated system.</p> <p>(2) Report on Column (b) by month the transmission system's peak load.</p> <p>(3) Report on Column (c) and (d) the specified information for each monthly transmission – system peak load reported on Column (b).</p> <p>(4) Report on Columns (e) through (i) by month the system's transmission usage by classification. Amounts reported as Through and Out Service in Column (g) are to be excluded from those amounts reported in Columns (e) and (f).</p> <p>(5) Amounts reported in Column (j) for Total Usage is the sum of Columns (h) and (i).</p>										
<b>NAME OF SYSTEM:</b>										
Line No.	Month	Monthly Peak MW – Total	Day of Monthly Peak	Hour of Monthly Peak	Imports Into ISO/RTO	Exports From ISO/RTO	Through and Out Service	Network Service Usage	Point-to-Point Service Usage	Total Usage (MWh)
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
1	January									
2	February									
3	March									
4	Total for Quarter									
5	April									
6	May									
7	June									
8	Total for Quarter									
9	July									
10	August									
11	September									
12	Total for Quarter									
13	October									
14	November									
15	December									
16	Total for Quarter									
17	Total Year to Date									

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Page 400a

[FR Doc. E7-6213 Filed 4-4-07; 8:45 am]

BILLING CODE 6717-01-C

**SOCIAL SECURITY ADMINISTRATION**

**20 CFR Parts 404 and 416**

[Docket No. SSA 2006-0097]

RIN 0960-AG35

**Temporary Extension of Attorney Fee Payment System to Title XVI; 5-Year Demonstration Project Extending Fee Withholding and Payment Procedures to Eligible Non-Attorney Representatives; Definition of Past-Due Benefits; and Assessment for Fee Payment Services**

**AGENCY:** Social Security Administration.  
**ACTION:** Interim final rules with request for comments.

**SUMMARY:** We are issuing these interim final rules to reflect in our regulations three self-implementing statutory provisions in the Social Security Protection Act of 2004 (SSPA) and three

related self-implementing provisions in earlier legislation. These earlier provisions are in the Omnibus Budget Reconciliation Act of 1990 (OBRA), the Social Security Independence and Program Improvements Act of 1994 (SSIPIA), and the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA).

**DATES:** These rules are effective April 5, 2007. To be sure your comments are considered, we must receive them no later than June 4, 2007.

**ADDRESSES:** You may give us your comments by: Internet through the Federal eRulemaking Portal at <http://www.regulations.gov>; e-mail to [regulations@ssa.gov](mailto:regulations@ssa.gov); telefax to (410) 966-2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235-7703. You may also deliver them to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on the Federal

eRulemaking Portal, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

**FOR FURTHER INFORMATION CONTACT:** Marg Handel, Supervisory Social Insurance Specialist, Office of Income Security Programs, Social Security Administration, 239 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-4639 or TTY (410) 966-5609. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:**

**Electronic Version**

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

**Background**

Sections 206(a) and 1631(d) of the Social Security Act (Act) direct the Commissioner of Social Security

(Commissioner) to determine the maximum fees representatives may charge claimants for services that they perform in claims before the Social Security Administration (SSA) under title II or title XVI of the Act. For claims under title II in which the claimant is found entitled to past-due benefits, section 206 of the Act further authorizes the Commissioner to pay attorneys' fees, approved by the Commissioner or by a Federal court, out of a portion of the past-due benefits in the case. Prior to enactment of the SSPA (Pub. L. 108-203), we were not authorized to withhold and pay fees approved for attorneys in title XVI cases or for non-attorney representatives in cases under either title of the Act.

#### **Direct Payment of Attorneys' Fees in Title XVI**

Section 302 of the SSPA amended section 1631(d)(2) of the Act to extend the attorney fee withholding and direct payment procedures to claims under title XVI of the Act. The amendments made by section 302 apply with respect to attorney fees that were first required to be paid from title XVI past-due benefits on or after February 28, 2005, and we began paying fees directly to attorneys in cases effectuated on or after that date. Section 302 includes a sunset provision. Under that provision, the amendments made by section 302 will not apply to claims for benefits with respect to which the claimant and the representative enter into the agreement for representation after February 28, 2010.

#### **Direct Payment of Fees to Eligible Non-Attorney Representatives**

Section 303 of the SSPA directs the Commissioner to carry out a 5-year nationwide demonstration project to determine the potential results of extending the fee withholding and direct payment procedures that apply to attorneys under titles II and XVI of the Act, to non-attorney representatives who meet certain minimum prerequisites specified in section 303 and any additional prerequisites that the Commissioner may prescribe. Under the prerequisites specified in section 303, individuals applying to participate in the demonstration project must have a bachelor's degree or equivalent education, possess liability insurance or equivalent insurance adequate to protect claimants in the event of malpractice by the representative, pass a criminal background check ensuring fitness to practice before SSA, pass an examination testing knowledge of the relevant provisions of the Act and the most recent developments in Agency

and court decisions, and demonstrate ongoing completion of qualified continuing education courses. In addition, the Commissioner has required that individuals applying to participate in the demonstration project show that they have sufficient prior experience representing claimants before SSA. More detailed information about these prerequisites may be found in the **Federal Register** notices published at the start of the demonstration project in 2005 (70 FR 2447, January 13, 2005; 70 FR 14490, March 22, 2005; and 70 FR 41250, July 18, 2005).

The 5-year demonstration project on direct payment of fees to eligible non-attorneys under section 303 of the SSPA commenced on February 28, 2005. We began making direct payment to non-attorneys under the demonstration project on July 28, 2005, the date on which we determined that the initial group of applicants had satisfied the prerequisites for participation in the project. The demonstration project established by SSPA section 303 applies to claims for benefits with respect to which the agreement for representation is entered into after February 27, 2005, and before March 1, 2010. In these interim final rules, we are amending our regulations to reflect the fact that non-attorney representatives participating in the demonstration project may have their approved fees withheld from their clients' past-due benefits and paid directly to them.

#### **Definition of "Past-Due Benefits"**

The amount of "past-due benefits" is important in calculating the fees of representatives and in determining the maximum amount we can pay directly for representation. Since we last defined the term "past-due benefits" in our regulations, there have been several legislative enactments that affect the definition of past-due benefits. In section 5106 of the OBRA (Pub. L. 101-508), section 321(f) of the SSIPIA (Pub. L. 103-296), and section 302 of the SSPA, the Act was amended to exclude from past-due benefits any continued benefits paid pursuant to § 404.1597a of part 404, any interim benefits paid pursuant to section 223(h) of the Act, any continued benefits paid pursuant to § 416.996 of part 416, any continued benefits paid pursuant to § 416.1336(b) of part 416, and any interim benefits paid pursuant to section 1631(a)(8) of the Act; to specify how a reduction under section 1127 of the Act (for receipt of benefits for the same period under both title II and title XVI) affects the past-due benefit computation; and to address the effect of interim assistance

reimbursement payments. We are amending our regulations to reflect these statutory changes.

#### **Assessment on Direct Payment of Fees**

Section 406 of the TWWIIA (Pub. L. 106-170) amended section 206 of the Act by adding section 206(d), which imposed an assessment on attorneys for the services we provide in determining and paying fees directly to attorneys from the benefits due claimants under title II of the Act. When that provision took effect on February 1, 2000, the amount of the assessment was 6.3 percent of the direct payment amount, with a provision allowing the Commissioner to determine for future years the percentage (not to exceed 6.3 percent) necessary to achieve full recovery of the costs of determining and paying fees to attorneys. Effective September 1, 2004, section 301 of the SSPA revised section 206(d) to cap the assessment at the lesser of the amount calculated using the percentage rate determined by the Commissioner or \$75, and to provide for annual adjustment of the \$75 cap based on the cost-of-living computation in section 215(i)(2)(A)(ii) of the Act. Sections 302 and 303 of the SSPA extended this assessment to the direct payment of fees to attorneys under title XVI and to the direct payment of fees to non-attorney representatives participating in the demonstration project authorized by section 303.

#### **Explanation of Changes**

We are amending our regulations on representation in 20 CFR parts 404 and 416 to reflect the legislative changes to sections 206, 1127 and 1631(d) of the Act that were enacted under section 5106 of OBRA, section 321(f) of the SSIPIA, section 406 of the TWWIIA, and sections 301 and 302 of the SSPA. In addition, we are revising the regulations to reflect the provisions of section 303 of the SSPA. We are making only those substantive changes necessary to conform our regulations to these currently applicable statutory provisions. In these changes we are:

- Amending § 404.1703 to revise the definition of "past-due benefits" to explain that we determine past-due benefits before any applicable reduction for receipt of benefits for the same period under title XVI and that past-due benefits do not include continued payment of disability benefits during appeal or interim benefits in cases of delayed final decision.
- Adding to § 416.1503 the definition of "past-due benefits" for title XVI benefits to explain that when we determine the amount of past-due

benefits, we subtract the amount of any reduction under section 1127 for the concurrent receipt of benefits for the same period under both title II and title XVI, regardless of whether the actual reduction was applied to the title II benefits or to the title XVI benefits, and that past-due benefits do not include continued benefits or interim benefits.

- Adding new §§ 404.1717 and 416.1517 to reflect the demonstration project extending benefit withholding and direct fee payment to non-attorneys under title II and title XVI. These sections also define “eligible to participate in the direct payment demonstration project” and describe the claims to which the demonstration project applies.

- Amending § 404.1720 to revise paragraph (b)(4) to provide that we make direct fee payments from title II past-due benefits both to attorneys and to non-attorney representatives eligible to participate in the direct payment demonstration project, and that we assume no responsibility for the payment of any fee that we have authorized to a non-attorney if the representative is not eligible to participate in the demonstration project. We are also revising paragraph (c)(3) to provide that our notice of a fee determination will state whether we are responsible for paying the representative’s fee from past-due benefits.

- Amending § 416.1520 to add a new paragraph (b)(4) stating that we make direct payment of fees from past-due benefits under title XVI to attorneys and to non-attorneys eligible to participate in the direct payment demonstration project, and that we assume no responsibility for the payment of any fee that we have authorized to a non-attorney if the representative is not eligible to participate in the demonstration project. We are revising paragraph (c)(3) to state that our notice of fee determination will state whether we are responsible for paying the fee, rather than that we are not responsible for paying the fee. We are also revising paragraph (d)(3) to state that we assume no responsibility for fee payment based on a revised determination if the representative does not file the request for administrative review timely.

- Revising § 416.1528 to place the existing text in a newly designated paragraph (a) having the heading, “Representation of a party in court proceedings” and to add a new paragraph (b) that has the heading “Attorney fee allowed by a Federal court.” Paragraph (b) states that the court may allow a reasonable fee to an attorney as part of its favorable

judgment in a proceeding under title XVI of the Act and that we may pay the attorney the amount of the fee out of, but not in addition to, the amount of the past-due benefits payable to the claimant by reason of the court judgment.

- Amending § 404.1730 to insert a previously omitted “the” in paragraph (a), to add a cross-reference to the definition of “past-due benefits” in § 404.1703, and to reflect in paragraphs (b) and (c) the extension of the direct payment of fees from past-due benefits under title II to non-attorneys eligible to participate in the direct payment demonstration project. We are also adding a new paragraph (d) to reflect that we impose an assessment on the representative when we pay a fee directly to the representative; to explain how we calculate the assessment; and to state that the representative may not, directly or indirectly, request or otherwise obtain reimbursement of the amount of the assessment from the claimant.

- Adding new § 416.1530 to state that direct payment of fees under title XVI extends to attorneys for fees we authorize and for fees a Federal court allows, and extends to non-attorneys eligible to participate in the direct payment demonstration project for fees we authorize. This section also describes the maximum amount we will pay to the representative; shows that we impose an assessment on the representative when we pay a fee directly to the representative; explains how we calculate the assessment; and states that the representative may not, directly or indirectly, request or otherwise obtain reimbursement of the amount of the assessment from the claimant.

In addition to these substantive changes, we are revising §§ 404.1720(b)(4) and 404.1730(a), (b), and (c) to refer to the person claiming a right under the old-age, disability, dependents’, or survivors’ benefits program in the second person, and thus make the language in these sections consistent with the use of the second person throughout the regulations.

### Regulatory Procedures

Pursuant to sections 205(a), 702(a)(5) and 1631(d)(1) of the Act, 42 U.S.C. 405(a), 902(a)(5) and 1383(d)(1), we follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of our regulations. The APA provides exceptions to its prior notice and public comment procedures when an agency finds there is good cause for dispensing with such

procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

In the case of these rules, we believe that, under 5 U.S.C. 553(b)(B), good cause exists for issuing these regulatory changes as interim final rules, without prior public comment. In these rules, we are merely revising our existing regulations on representation of parties to reflect statutory changes made by section 5106 of OBRA, section 321(f) of the SSIPIA, section 406 of the TWWIIA, and sections 301, 302 and 303 of the SSPA. Our intent is to conform our regulations to the changes enacted in those statutes, all of which are already in effect and all of which we have already implemented. We also have no discretion not to apply these statutory enactments. Therefore, we believe opportunity for prior public comment is unnecessary, and we are issuing these regulations as interim final rules. However, we recognize that the statutory provisions reflected in these rules are of considerable importance to those who are affected by them. We also are considering the possibility that some affected individuals may disagree with our interpretation of the numerous statutory provisions reflected in these interim final rules. Therefore, we are inviting public comment on the changes made by these interim final rules, and will consider any responsive comments received within 60 days of the publication of these interim final rules.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, we are revising our title II and title XVI rules on representation of parties to reflect legislative provisions that are already in effect, and that we have been applying since they became effective. Without these changes, our rules will not reflect current law or our operating policy and procedures, and thus may mislead the public. Therefore, we find that it is in the public interest to make these rules effective upon publication.

### Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these interim final rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review. We have also determined that these rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

*Regulatory Flexibility Act*

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities. Also, these final regulations simply reflect legislation already in effect. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

*Paperwork Reduction Act*

These rules contain reporting requirements at §§ 404.1717,

404.1730(c)(1), 404.1730(c)(2)(i), 404.1730(c)(2)(ii), 416.1528(a), 416.1530(c)(1), 416.1530(c)(2)(i), and 416.1530(c)(2)(ii). Following is a chart describing the burdens posed by these regulation sections. Most of the Information Collections contained in this rule have been cleared under pre-existing OMB control numbers 0960-0699 (Non-Attorney Representative Demonstration Project), 0960-0737 (Continuing Education Information Collection under Non-Attorney Demonstration Project), and 0960-0104

(SSA-1560-U4, the Petition to Obtain Approval of a Fee for Representing a Claimant before the Social Security Administration). The 1-hour placeholder burden figures in the chart indicate that the burdens for these sections were already cleared by OMB in ICRs submitted prior to the publication of these interim final rules. For the sections not covered by existing Information Collections, we have provided specific burden information.

Regulation section	Description of public reporting requirement	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
404.1717 .....	To establish eligibility to participate in the demonstration project.	.....	.....	.....	1 hour (placeholder burden).
404.1730(c)(1) .....	To receive direct payment of fees from beneficiaries' past-due benefits, their representatives must file a request for approval of a fee, or written notice of intent to file a request, at an SSA office within 60 days of the date a favorable determination notice is mailed.	.....	.....	.....	1 hour (placeholder burden).
404.1730(c)(2)(i) .....	If representatives do not file a request within 60 days, they will receive a notice telling them to do so within 20 days of the notice date.	841	10	30	4,205
404.1730(c)(2)(ii) .....	Representatives must send beneficiaries copies of time extension requests they made to SSA.	600	1	3	30
416.1517 .....	Same as for 404.1717, except this section applies to Title XVI beneficiaries.	.....	.....	.....	1 hour (placeholder burden).
416.1528(a) .....	If representatives have provided the beneficiary services relating to dealings with SSA, they must specify what portion of the fee they want to charge for those services; representatives must file the request for charging fees.	.....	.....	.....	1 hour (placeholder burden).
416.1530(c)(1) .....	Same as for 404.1730(c)(1), except this section applies to Title XVI beneficiaries.	1	1	1	1 hour (placeholder burden).
416.1530(c)(2)(i) .....	Same as for 404.1730(c)(2)(i), except this section applies to Title XVI beneficiaries.	561	10	30	2,805
416.1530(c)(2)(ii) .....	Same as for 404.1730(c)(2)(ii), except this section applies to Title XVI beneficiaries.	400	1	3	20
Totals .....	N/A .....	2,402	.....	.....	7,065

Information Collection Requests have been submitted to OMB for those information collections that require revisions as a result of this rule. While these rules will be effective upon publication, these burdens will not be effective until cleared by OMB. We will publish a notice in the **Federal Register** upon OMB approval of the information collection requirement(s).

Not all Information Collections will be revised as a result of this rule. Nevertheless, we are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize the burden on respondents,

including the use of automated collection techniques or other forms of information technology. Comments should be faxed or e-mailed to the OMB desk officer for SSA at the following fax number or e-mail address: Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202-395-6974, E-mail address: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov).

A comment is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer at 410-

965-0454 or e-mail at [OPLM.RCO@ssa.gov](mailto:OPLM.RCO@ssa.gov). (Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

**List of Subjects**

*20 CFR Part 404*

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

## 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: December 1, 2006.

**Jo Anne B. Barnhart,**

*Commissioner of Social Security.*

For the reasons set out in the preamble, we are amending subpart R of part 404 and subpart O of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

**PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)**

**Subpart R—[Amended]**

- 1. Revise the authority citation for subpart R of part 404 to read as follows:

**Authority:** Secs. 205(a), 206, 702(a)(5), and 1127 of the Social Security Act (42 U.S.C. 405(a), 406, 902(a)(5), and 1320a–6); sec. 303, Pub. L. 108–203, 118 Stat. 493.

- 2. Amend § 404.1703 by revising the definition of “past-due benefits” to read as follows:

**§ 404.1703 Definitions.**

\* \* \* \* \*

*Past-due benefits* means the total amount of benefits under title II of the Act that has accumulated to all beneficiaries because of a favorable administrative or judicial determination or decision, up to but not including the month the determination or decision is made. For purposes of calculating fees for representation, we determine past-due benefits before any applicable reduction under section 1127 of the Act (for receipt of benefits for the same period under title XVI). Past-due benefits do not include:

- (1) Continued benefits paid pursuant to § 404.1597a of this part; or  
(2) Interim benefits paid pursuant to section 223(h) of the Act.

\* \* \* \* \*

- 3. Add § 404.1717 to read as follows:

**§ 404.1717 Demonstration project on direct payment of fees to non-attorneys.**

(a) Section 303 of the Social Security Protection Act of 2004 (SSPA), Public Law 108–203, requires the Commissioner of Social Security (Commissioner) to develop and implement a 5-year nationwide demonstration project that extends attorney fee withholding and direct payment procedures to any non-attorney representative who meets minimum prerequisites for participating in the

project specified in section 303 of the SSPA and any additional prerequisites prescribed by the Commissioner. The objective of the demonstration project is to determine the effect of extending to certain non-attorneys the fee withholding and direct payment procedures that apply to attorneys. A final report on the results of the demonstration project is to be completed and transmitted to Congress within 90 days of the project termination date, February 28, 2010.

(b) As used in this subpart, the term “eligible to participate in the direct payment demonstration project” refers to the status of a non-attorney who we have determined meets the prerequisites for participation in the demonstration project.

(c) The provisions of section 303 authorizing the direct payment of fees to non-attorneys and the withholding of title II benefits for that purpose apply in claims for benefits with respect to which the agreement for representation is entered into after February 27, 2005, and before March 1, 2010.

- 4. Amend § 404.1720 by revising paragraphs (b)(4) and (c)(3) to read as follows:

**§ 404.1720 Fee for a representative's services.**

\* \* \* \* \*

(b) \* \* \*

(4) If your representative is an attorney, or a non-attorney who is eligible to participate in the direct payment demonstration project, as defined in § 404.1717, and you are entitled to past-due benefits, as defined in § 404.1703, we will pay the authorized fee, or a part of the authorized fee, directly to the representative out of the past-due benefits, subject to the limitations described in § 404.1730(b)(1). If the representative is a non-attorney who is not eligible to participate in the direct payment demonstration project, we assume no responsibility for the payment of any fee that we have authorized.

(c) \* \* \*

(3) Whether we are responsible for paying the fee from past-due benefits; and

\* \* \* \* \*

- 5. Revise § 404.1730 to read as follows:

**§ 404.1730 Payment of fees.**

(a) *Fees allowed by a Federal court.* We will pay a representative who is an attorney, out of your past-due benefits, as defined in § 404.1703, the amount of the fee allowed by a Federal court in a

proceeding under title II of the Act. The payment we make to the attorney is subject to the limitations described in paragraph (b)(1) of this section.

(b) *Fees we may authorize—(1) Attorneys and non-attorneys eligible to participate in the direct payment demonstration project.* Except as provided in paragraph (c) of this section, if we make a determination or decision in your favor and you were represented by an attorney or a non-attorney who is eligible to participate in the direct payment demonstration project, as defined in § 404.1717, and as a result of the determination or decision you have past-due benefits, as defined in § 404.1703, we will pay the representative out of the past-due benefits, the smaller of the amounts in paragraph (b)(1)(i) or (ii) of this section, less the amount of the assessment described in paragraph (d) of this section.

(i) Twenty-five percent of the total of the past-due benefits; or

(ii) The amount of the fee that we set.

(2) *Non-attorneys not eligible to participate in the direct payment demonstration project.* If the representative is a non-attorney who is not eligible to participate in the direct payment demonstration project, we assume no responsibility for the payment of any fee that we have authorized. We will not deduct the fee from your past-due benefits.

(c) *Time limit for filing request for approval of fee in order to obtain direct payment.* (1) In order to receive direct payment of a fee from your past-due benefits, a representative who is either an attorney or a non-attorney who is eligible to participate in the direct payment demonstration project should file a request for approval of a fee, or written notice of the intent to file a request, at one of our offices within 60 days of the date the notice of the favorable determination is mailed.

(2)(i) If no request is filed within 60 days of the date the notice of the favorable determination is mailed, we will mail a written notice to you and your representative at your last known addresses. The notice will inform you and the representative that unless the representative files, within 20 days from the date of the notice, a written request for approval of a fee under § 404.1725, or a written request for an extension of time, we will pay all the past-due benefits to you.

(ii) The representative must send you a copy of any request made to us for an extension of time. If the request is not filed within 20 days of the date of the notice, or by the last day of any extension we approved, we will pay all

past-due benefits to you. We must approve any fee the representative charges after that time, but the collection of any approved fee is a matter between you and the representative.

(d) *Assessment when we pay a fee directly to a representative.* (1) Whenever we pay a fee directly to a representative from past-due benefits, we impose an assessment on the representative.

(2) The amount of the assessment is equal to the lesser of:

(i) The product we obtain by multiplying the amount of the fee we are paying to the representative by the percentage rate the Commissioner of Social Security determines is necessary to achieve full recovery of the costs of determining and paying fees directly to representatives, but not in excess of 6.3 percent; and

(ii) The maximum assessment amount. The maximum assessment amount was initially set at \$75, but by law is adjusted annually to reflect the increase in the cost of living. (See §§ 404.270 through 404.277 for an explanation of how the cost-of-living adjustment is computed.) If the adjusted amount is not a multiple of \$1, we round down the amount to the next lower \$1, but the amount will not be less than \$75. We will announce any increase in the maximum assessment amount and explain how the increase was determined in the **Federal Register**.

(3) We collect the assessment by subtracting it from the amount of the fee to be paid to the representative. The representative who is subject to an assessment may not, directly or indirectly, request or otherwise obtain reimbursement of the assessment from you.

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

### Subpart O—[Amended]

■ 6. Revise the authority citation for subpart O of part 416 to read as follows:

**Authority:** Secs. 702(a)(5), 1127 and 1631(d) of the Social Security Act (42 U.S.C. 902(a)(5), 1320a-6 and 1383(d)); sec. 303, Pub. L. 108-203, 118 Stat. 493.

■ 7. Amend § 416.1503 by adding a new definition, in alphabetical order, to read as follows:

#### § 416.1503 Definitions.

*Past-due benefits* means the total amount of payments under title XVI of the Act, the Supplemental Security Income (SSI) program, including any

Federally administered State payments, that has accumulated to you and your spouse because of a favorable administrative or judicial determination or decision, up to but not including the month the determination or decision is made. For purposes of calculating fees for representation, we first determine the SSI past-due benefits before any applicable reduction for reimbursement to a State (or political subdivision) for interim assistance reimbursement, and before any applicable reduction under section 1127 of the Act (for receipt of benefits for the same period under title II). We then reduce that figure by the amount of any reduction of title II or title XVI benefits that was required by section 1127. We do this whether the actual offset, as provided under section 1127, reduced the title II or title XVI benefits. Past-due benefits do not include:

(1) Continued benefits paid pursuant to § 416.996 of this part;

(2) Continued benefits paid pursuant to § 416.1336(b) of this part; or

(3) Interim benefits paid pursuant to section 1631(a)(8) of the Act.

\* \* \* \* \*

■ 8. Add § 416.1517 to read as follows:

#### § 416.1517 Demonstration project on direct payment of fees to non-attorneys.

(a) Section 303 of the Social Security Protection Act of 2004 (SSPA), Public Law 108-203, requires the Commissioner of Social Security (Commissioner) to develop and implement a 5-year nationwide demonstration project that extends attorney fee withholding and direct payment procedures to any non-attorney representative who meets minimum prerequisites for participating in the project specified in section 303 of the SSPA and any additional prerequisites prescribed by the Commissioner. The objective of this demonstration project is to determine the effect of extending to certain non-attorneys the fee withholding and direct payment procedures that apply to attorneys. A final report on the results of the demonstration project is to be completed and transmitted to Congress within 90 days of the project termination date, February 28, 2010.

(b) As used in this subpart, the term “eligible to participate in the direct payment demonstration project” refers to the status of a non-attorney who we have determined meets the prerequisites for participation in the demonstration project.

(c) The provisions of section 303 authorizing the direct payment of fees to non-attorneys and the withholding of title XVI benefits for that purpose apply

in claims for benefits with respect to which the agreement for representation is entered into after February 27, 2005, and before March 1, 2010.

■ 9. Amend § 416.1520 by adding paragraph (b)(4) and revising paragraphs (c)(3) and (d)(3) to read as follows:

#### § 416.1520 Fee for a representative's services.

\* \* \* \* \*

(b) \* \* \*

(4) If your representative is an attorney, or a non-attorney who is eligible to participate in the direct payment demonstration project, as defined in § 416.1517, and you are entitled to past-due benefits, as defined in § 416.1503, we will pay the authorized fee, or a part of the authorized fee, directly to the representative out of the past-due benefits, subject to the limitations described in § 416.1530(b)(1). If the representative is a non-attorney who is not eligible to participate in the direct payment demonstration project, we assume no responsibility for the payment of any fee that we have authorized.

(c) \* \* \*

(3) Whether we are responsible for paying the fee from past-due benefits; and

\* \* \* \* \*

(d) \* \* \*

(3) *Payment of fees.* We assume no responsibility for the payment of a fee based on a revised determination if the request for administrative review was not filed on time.

■ 10. Revise § 416.1528 to read as follows:

#### § 416.1528 Proceedings before a State or Federal court.

(a) *Representation of a party in court proceedings.* We shall not consider any service the representative gave you in any proceeding before a State or Federal court to be services as a representative in dealings with us. However, if the representative also has given service to you in the same connection in any dealings with us, he or she must specify what, if any, portion of the fee he or she wants to charge is for services performed in dealings with us. If the representative charges any fee for those services, he or she must file the request and furnish all of the information required by § 416.1525.

(b) *Attorney fee allowed by a Federal court.* If a Federal court in any proceeding under title XVI of the Act makes a judgment in favor of the claimant who was represented before the court by an attorney, and the court, under section 1631(d)(2) of the Act,

allows to the attorney as part of its judgment a fee not in excess of 25 percent of the total of past-due benefits to which the claimant is eligible by reason of the judgment, we may pay the attorney the amount of the fee out of, but not in addition to, the amount of the past-due benefits payable. We will not pay directly any other fee your representative may request.

■ 11. Add § 416.1530 to read as follows:

**§ 416.1530 Payment of fees.**

(a) *Fees allowed by a Federal court.* Commencing February 28, 2005, we will pay a representative who is an attorney, out of your past-due benefits, as defined in § 416.1503, the amount of the fee allowed by a Federal court in a proceeding under title XVI of the Act. The payment we make to the attorney is subject to the limitations described in paragraph (b)(1) of this section.

(b) *Fees we may authorize*—(1) Attorneys and non-attorneys eligible to participate in the direct payment demonstration project. Except as provided in paragraphs (c) and (e) of this section, commencing February 28, 2005, if we make a determination or decision in your favor and you were represented by an attorney or a non-attorney who is eligible to participate in the direct payment demonstration project, as defined in § 416.1517, and as a result of the determination or decision you have past-due benefits, as defined in § 416.1503, we will pay the representative out of the past-due benefits, the smallest of the amounts in paragraphs (b)(1)(i) through (iii) of this section, less the amount of the assessment described in paragraph (d) of this section.

(i) Twenty-five percent of the total of the past-due benefits, as determined before any payment to a State (or political subdivision) to reimburse the State (or political subdivision) for interim assistance furnished you, as described in § 416.525 of this part, and reduced by the amount of any reduction in benefits under this title or title II pursuant to section 1127 of the Act;

(ii) The amount of past-due benefits remaining after we pay to a State (or political subdivision) an amount sufficient to reimburse the State (or political subdivision) for interim assistance furnished you, as described in § 416.525 of this part, and after any applicable reductions under section 1127 of the Act; or

(iii) The amount of the fee that we set.

(2) *Non-attorneys not eligible to participate in the direct payment demonstration project.* If the representative is a non-attorney who is not eligible to participate in the direct

payment demonstration project, we assume no responsibility for the payment of any fee that we have authorized. We will not deduct the fee from your past-due benefits.

(c) *Time limit for filing request for approval of fee in order to obtain direct payment.* (1) In order to receive direct payment of a fee from your past-due benefits, a representative who is either an attorney or a non-attorney who is eligible to participate in the direct payment demonstration project should file a request for approval of a fee, or written notice of the intent to file a request, at one of our offices within 60 days of the date the notice of the favorable determination is mailed.

(2)(i) If no request is filed within 60 days of the date the notice of the favorable determination is mailed, we will mail a written notice to you and your representative at your last known addresses. The notice will inform you and the representative that unless the representative files, within 20 days from the date of the notice, a written request for approval of a fee under § 416.1525, or a written request for an extension of time, we will pay all the past-due benefits to you.

(ii) The representative must send you a copy of any request made to us for an extension of time. If the request is not filed within 20 days of the date of the notice, or by the last day of any extension we approved, we will pay to you all past-due benefits remaining after we reimburse the State for any interim assistance you received. We must approve any fee the representative charges after that time, but the collection of any approved fee is a matter between you and the representative.

(d) *Assessment when we pay a fee directly to a representative.* (1) Whenever we pay a fee directly to a representative from past-due benefits, we impose an assessment on the representative.

(2) The amount of the assessment is equal to the lesser of:

(i) The product we obtain by multiplying the amount of the fee we are paying to the representative by the percentage rate the Commissioner of Social Security determines is necessary to achieve full recovery of the costs of determining and paying fees directly to representatives, but not in excess of 6.3 percent; and

(ii) The maximum assessment amount. The maximum assessment amount was initially set at \$75, but by law is adjusted annually to reflect the increase in the cost of living. (See §§ 404.270 through 404.277 for an explanation of how the cost-of-living

adjustment is computed.) If the adjusted amount is not a multiple of \$1, we round down the amount to the next lower \$1, but the amount will not be less than \$75. We will announce any increase in the maximum assessment amount, and explain how that increase was determined in the **Federal Register**.

(3) We collect the assessment by subtracting it from the amount of the fee to be paid to the representative. The representative who is subject to an assessment may not, directly or indirectly, request or otherwise obtain reimbursement of the assessment from you.

(e) *Effective dates for extension of direct payment of fee to attorneys.* The provisions of this subpart authorizing the direct payment of fees to attorneys and the withholding of title XVI benefits for that purpose, apply in claims for benefits with respect to which the agreement for representation is entered into before March 1, 2010.

[FR Doc. E7-6383 Filed 4-4-07; 8:45 am]

BILLING CODE 4191-02-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[CCGD05-07-023]

RIN 1625-AA00

**Safety Zone: Willoughby Point Located on Langley Air Force Base, Back River, Hampton, VA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in support of the Langley Air Force Base Air Show event occurring on April 27, 28 and 29, 2007 on the Back River in the vicinity of Willoughby Point in Hampton, VA. This action is intended to restrict vessel traffic on Back River as necessary to protect mariners from the hazards associated with the air show.

**DATES:** This rule is effective from 2 p.m. on April 27, 2007 until 4:30 p.m. on April 29, 2007.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD05-07-023 and are available for inspection or copying at the Sector Hampton Roads, Norfolk Federal Building, 200 Granby St., 7th Floor, Norfolk, VA 23510, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

Sector Hampton Roads maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Norfolk Federal Building between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade TaQuitia Winn, Assistant Chief, Waterways Management Division, Sector Hampton Roads, at (757) 668-5580.

**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 in the **Federal Register**. This safety zone of short duration is needed to provide for the safety of persons and vessels in the vicinity of the Air Show. Immediate action is needed to protect mariners and vessels transiting the area from the hazards associated with the airplanes flying overhead. However, advance notifications will be made via maritime advisories so mariners can adjust their plans accordingly.

**Background and Purpose**

On April 27, 28 and 29, 2007, the Langley Air Force Base Air Show event will be held on Back River in the vicinity of Willoughby Point in Hampton, VA. Due to the need to protect mariners and spectators from the hazards associated with the air show, vessel traffic will be temporarily restricted and no vessels may anchor within the following area described below.

**Discussion of Rule**

The Coast Guard is establishing a safety zone that encompasses all waters within the following area 37°-05'-35" N / 076°-20'-47" W, 37°-05'-46" N / 076°-20'-04" W, 37°-05'-12" N / 076°-19'-59" W, 37°-05'-12" N / 076°-20'-18" W in the vicinity of the Willoughby Point in Hampton, VA. This regulated area will be established in the interest of public safety during the Langley Air Force Base Air Show event and will be enforced from 2 p.m. to 4:30 p.m. on April 27, 28 and 29, 2007.

**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 proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation restricts access to the regulated area, the effect of this rule will not be significant because:

(i) The safety zone will be in effect for a limited duration and (ii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

**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 because the zone will be in place for a limited duration of time and maritime advisories will be issued allowing the mariners to adjust their plans accordingly. However, this rule may affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in that portion of the Back River from 2 p.m. to 4:30 p.m. on April 27, 28 and 29, 2007.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade TaQuitia Winn, Assistant Chief, Waterways Management Division, Sector Hampton Roads at (757) 668-5580.

The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). 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 affect 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.ID

and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of 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. An "Environmental Analysis Check List" is available in the docket where indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting & Record Keeping Requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 Subpart C 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(g), 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.T05-023, to read as follows:

#### § 165.T05-023 Safety Zone: Langley Air Force Base Air Show, Willoughby Point, Hampton, VA.

(a) *Location.* The following area is a safety zone: All waters within the following area of the Back River in the vicinity of Willoughby Point in Hampton, VA, encompassed by a line connecting in 37°-05'-35" N / 076°-20'-47" W, 37°-05'-46" N / 076°-20'-04" W, 37°-05'-12" N / 076°-19'-59" W, 37°-05'-12" N / 076°-20'-18" W.

(b) *Definition.* As used in this section: Designated Representative means Any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, VA, to act on his behalf.

(c) *Regulation.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone as described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the safety zone must: (i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or

petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads and the Sector Duty Officer at Sector Hampton Roads in Portsmouth, VA, can be contacted at telephone number (757) 668-5555 or (757) 484-8192.

(4) The Captain of the Port or his designated representatives enforcing the safety zone can be contacted on VHF-FM 13 and 16.

(d) *Effective period.* This regulation is effective from 2 p.m. on April 27, 2007, until 4:30 p.m. on April 29, 2007.

(e) *Enforcement period.* This regulation will be enforced from 2 p.m. to 4:30 p.m. on April 27, 28, and 29, 2007.

Dated: March 19, 2007.

**Patrick B. Trapp,**

*Captain, U.S. Coast Guard Captain of the Port, Hampton Roads.*

[FR Doc. E7-6262 Filed 4-4-07; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 4

RIN 2900-AM60

#### Schedule for Rating Disabilities; Appendices A, B, and C; Correction

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Final rule; correction.

**SUMMARY:** The Department of Veterans Affairs (VA) published a document in the **Federal Register** of March 20, 2007, revising its Schedule for Rating Disabilities, Appendices A, B, and C. The document inadvertently contained two typographical errors, and this document corrects those errors.

**DATES:** Effective Date: This correction is effective April 19, 2007.

**FOR FURTHER INFORMATION CONTACT:** Trude Steele, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-7210.

**SUPPLEMENTARY INFORMATION:** The VA published a document in the **Federal Register** on March 20, 2007, (72 FR 12983) revising its Schedule for Rating Disabilities, Appendices A, B, and C to include all current diagnostic codes. In FR Doc. E7-4914, published on March

20, 2007, two typographical errors were inadvertently published. This document corrects those errors.

In rule FR Doc. E7-4914 published on March 20, 2007, (72 FR 12983) make the following corrections. On page 12984, in the third column, to the right of Diagnostic code No. 5264, the date

“September 9, 1795” is corrected to read “September 9, 1975.” In addition, on page 12989, in the third column, to the right of Diagnostic code No. 9403, remove the phrase “criterion February 3, 1988” that appears immediately following the identical phrase “criterion February 3, 1988”.

Approved: March 29, 2007.

**Robert C. McFetridge,**

*Assistant to the Secretary for Regulation Policy and Management.*

[FR Doc. E7-6286 Filed 4-4-07; 8:45 am]

**BILLING CODE 8320-01-P**

# Proposed Rules

Federal Register

Vol. 72, No. 65

Thursday, April 5, 2007

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

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

#### 7 CFR Part 3560

RIN 0575-AC66

#### Reserve Account

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** Through this action, the Rural Housing Service (RHS) is proposing to amend its regulation to change the requirements of the Reserve Account for the Sections 514/516 Farm Labor Housing program and the Section 515 Rural Rental Housing (RRH) program. The intended effect of this action is to address reserve account requirements of new construction rental housing funded under Sections 514/516 and Section 515 and does not affect reserve accounts for existing portfolios.

**DATES:** Written or e-mail comments must be received on or before June 4, 2007.

**ADDRESSES:** You may submit comments to this rule by any of the following methods:

- *Agency Web site:* <http://www.rurdev.usda.gov/regs>. Follow the instructions for submitting comments on the Web site.
- *e-mail:* [comments@one.usda.gov](mailto:comments@one.usda.gov). Include the RIN number (0575-AC66) and the word "MFH" in the subject line of the message.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250-0742.

- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or another mail courier service requiring a street address to the Branch Chief, Regulations and Paperwork

Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Suite 701, Washington DC 20024.

All written comments will be available for public inspection during regular hours at the 300 7th Street, SW., address listed above.

#### FOR FURTHER INFORMATION CONTACT:

Tammy S. Daniels, Senior Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, U.S. Department of Agriculture, STOP 0781, 1400 Independence Ave., SW., Washington, DC 20250-0781. Telephone: 202-720-0021 (this is not a toll-free number); e-mail: [tammy.daniels@wdc.usda.gov](mailto:tammy.daniels@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Classification

This proposed rule has been determined to be not significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

##### Civil Justice Reform

This proposed rule has been reviewed under E. O. 12988, Civil Justice Reform. If this proposed rule is adopted: (1) Unless otherwise specifically provided, all state and local laws that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit.

##### Regulatory Flexibility Act

The proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature on this document that this rule will not have a significant economic impact on a substantial number of small entities. This rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

##### Paperwork Reduction Act

There are no new reporting and recordkeeping requirements associated with this rule.

### E-Government Act Compliance

RHS is committed to complying with the E-Government Act, by promoting the use of the Internet and other information technologies in order to provide increased opportunities for citizen access to Government information, services, and other purposes.

### Unfunded Mandate Reform Act (UMRA)

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." RHS determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the environment. Therefore in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

### Programs Affected

The programs affected by this regulation are listed in the Catalog of Federal Domestic Assistance under numbers 10.405—Farm Labor Housing Loans and Grants; 10.415—Rural Rental Housing Loans; and 10.427—Rural Rental Assistance Payments.

### Federalism

For the reasons discussed above, this proposed rule does not have significant Federalism implications that warrant the preparation of a Federalism assessment under Executive Order 13132.

### Intergovernmental Consultation

These loans are subject to the provisions of E.O. 12372 which require intergovernmental consultation with state and local officials. RHS conducts intergovernmental consultations for each loan in a manner delineated in 7 CFR part 1940, subpart J (available in any Rural Development office and on the Internet at <http://www.rurdev.usda.gov>).

### Background Information

A life-cycle cost analysis that meets Rural Development approval will be prepared by the project architect. The life cycle cost analysis will be used to determine the expected usable life of a building component and furnishing and to determine which building components or furnishings are the most cost efficient over the life to the building. The reserve account deposit level will be maintained through steady deposits to meet the needs of the project as they become due. Adjustments may be made at five or ten year intervals, either through an updated Comprehensive Needs Assessment or a part of the original plan. The requirement for a life cycle cost analysis will be used for new construction rental housing funded under Sections 514/516 and Section 515 of the Housing Act of 1949. The new requirement is intended to assure quality construction as well as long term viability of complexes. Reserve levels will be based on life cycle costs in order to ensure necessary resources are available when needed to replace essential building components. Existing loan agreement forms will have an addendum that is properly executed by the borrower establishing the terms of the life cycle analysis and reserve requirement. The current interim final rule requires an annual minimum deposit of 1 percent of the total development cost be put in a reserve account. This regulatory change is proposed to assure that we have the reserve accounts properly sized to meet the capital needs anticipated at the time of construction. This change will only affect reserve account requirements of new construction rental housing funded under Sections 515 RRH or Sections 514/516 Farm Labor Housing. Due to the recent increase in the use of third party money to leverage Rural Development funding, the Agency has found that the arbitrary nature of the existing reserve account funding formula sometimes causes the reserve account to be set artificially high. While the objective of the proposed change is to primarily produce an accurately measured reserve account funding requirement, the change may actually lead to reduced funding levels in MFH new construction projects that utilize leveraged financing.

### List of Subjects in 7 CFR 3560

Accounting, Accounting servicing, Administrative practice and procedure, Aged, Farm labor housing, Foreclosure, Grant programs—Housing and community development, Government acquired property, Government property management, Handicapped, Insurance,

Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Low and moderate income housing—Rental, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Rural areas, Rural housing, Sale of government acquired property, Surplus government property.

Therefore, chapter XXXV, Title 7 of the Code of Federal Regulations, is proposed to be amended as follows:

### PART 3560—DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

1. The authority citation for Part 3560 continues to read as follows:

**Authority:** 42 U.S.C. 1480.

### Subpart B—Direct Loan and Grant Origination

2. Section 3560.65 is revised to read as follows:

#### § 3560.65 Reserve account.

To meet major capital expenses of a housing project, applicants must establish and fund a reserve account that meets requirements of § 3560.306. The applicant must agree to make monthly contributions to the reserve account pursuant to a reserve account analysis developed by Rural Development which sets forth how the reserve account funds will meet the capital needs of the property over a 20-year period. The reserve account analysis is based on either a capital needs assessment or life cycle cost analysis, provided to Rural Development by the applicant.

Dated: March 27, 2007.

**Russell T. Davis,**

*Administrator, Rural Housing Service.*

[FR Doc. E7-6287 Filed 4-4-07; 8:45 am]

**BILLING CODE 3410-XV-P**

### NUCLEAR REGULATORY COMMISSION

#### 10 CFR Part 50

**RIN 3150-AH76**

#### Industry Codes and Standards; Amended Requirements

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to incorporate by reference the 2004 Edition of Section III,

Division 1 and Section XI, Division 1 of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPV Code) and the 2004 Edition of the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) to provide updated rules for constructing and inspecting components and testing pumps, valves, and dynamic restraints (snubbers) in light-water nuclear power plants. NRC also proposes to require the use of ASME Code Cases N-722 and N-729-1, both with conditions, and to remove certain obsolete requirements specified in § 50.55a. This action is in accordance with the NRC's policy to periodically update the regulations to incorporate new editions and addenda of the ASME Codes by reference and is intended to maintain the safety of nuclear reactors and make NRC activities more effective and efficient.

**DATES:** Comments regarding the proposed amendment must be submitted by June 19, 2007. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to ensure consideration of comments received on or before this date.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include RIN 3150-AH76 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

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

*E-mail comments to:* [SECY@nrc.gov](mailto:SECY@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking Web site to Carol Gallagher (301) 415-5905; e-mail [cag@nrc.gov](mailto:cag@nrc.gov).

*Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone (301) 415-1966).

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

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1-F21, One White Flint

North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at <http://ruleforum.llnl.gov>.

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

**FOR FURTHER INFORMATION CONTACT:** Lee Banic, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-2771, e-mail: [mjb@nrc.gov](mailto:mjb@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Summary of Proposed Revisions to 10 CFR 50.55a
- III. Generic Aging Lessons Learned Report
- IV. Availability of Documents
- V. Plain Language
- VI. Voluntary Consensus Standards
- VII. Finding of No Significant Environmental Impact: Environmental Assessment
- VIII. Paperwork Reduction Act Statement
- IX. Regulatory Analysis
- X. Regulatory Flexibility Certification
- XI. Backfit Analysis

**I. Background**

The NRC is proposing to amend 10 CFR 50.55a to incorporate by reference the 2004 Edition of Section III, Division 1 and Section XI, Division 1 of the ASME BPV Code and the 2004 Edition of the ASME OM Code. Section 50.55a requires the use of Section III, Division 1 of the ASME BPV Code for the construction of nuclear power plant components; Section XI, Division 1 of the ASME BPV Code for the inservice inspection (ISI) of nuclear power plant components; and the ASME OM Code for the inservice testing (IST) of pumps and valves.

In a separate proposed rule, published on March 13, 2006 (71 FR 12781), the Commission proposed to add language to the introductory paragraph of § 50.55a to establish the applicability of the conditions therein to licenses and

approvals issued under Part 52. Specifically, that proposed rule would add two new sentences: "Each combined license for a utilization facility is subject to the following conditions in addition to those specified in § 50.55, except that each combined license for a boiling or pressurized water-cooled nuclear power facility is subject to the conditions in paragraphs (f) and (g) of this section, but only after the Commission makes the finding under § 52.103(g)" and "Each manufacturing license, standard design approval, and standard design certification application under part 52 of this chapter is subject to the conditions in paragraphs (a), (b)(1), (b)(4), (c), (d), (e), (f)(3), and (g)(3) of this section." The Commission expects that the March 13, 2006, proposed rule will become final before the proposed rule updating § 50.55a to the 2004 Edition. The net effect then is that combined licenses would be subject to the updated requirements when the rulemaking proposed in this notice becomes final.

The ASME BPV Code and OM Code are national voluntary consensus standards, and are required by the National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, to be used by government agencies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. It has been the NRC's practice to review new editions and addenda of the ASME BPV and OM Codes and periodically update § 50.55a to incorporate newer editions and addenda by reference. New editions of the subject codes are issued every 3 years; addenda to the editions are issued yearly except in years when a new edition is issued. The editions and addenda of the ASME BPV and OM Codes were last incorporated by reference into the regulations in a final rule dated October 1, 2004, (69 FR 58804). In that rule, § 50.55a was revised to incorporate by reference the 2001 Edition and 2002 and 2003 Addenda of Sections III and XI, Division 1, of the ASME BPV Code and the 2001 Edition and 2002 and 2003 Addenda of the ASME OM Code.

The NRC is now proposing to incorporate by reference: Section III of the 2004 Edition of the ASME BPV Code; Section XI of the 2004 Edition of the ASME BPV Code subject to proposed modifications and limitations; and the 2004 Edition of the ASME OM Code. *The NRC is proposing to amend its regulations as follows:*

1. Remove 10 CFR 50.55a(b)(2)(xi), concerning components exempt from examination.

2. Remove 10 CFR 50.55a(b)(2)(xiii) concerning the provisions of Code Case N-523-1, "Mechanical Clamping Devices for Class 2 and 3 Piping."

3. Modify 10 CFR 50.55a(b)(2)(xv) to implement Appendix VIII of Section XI of the 2004 Edition of the ASME BPV Code.

4. Add 10 CFR 50.55a(b)(2)(xx) to require nondestructive examination (NDE) provision in IWA-4540(a)(2) of the 2002 Addenda of Section XI when performing system leakage tests after repair and replacement activities.

5. Revise 10 CFR 50.55a(b)(2)(xxi) to be consistent with the NRC's imposed condition for Code Case N-648-1 in Regulatory Guide (RG) 1.147, Revision 14.

6. Add 10 CFR 50.55a(b)(2)(xxviii) to correct a typographical error regarding an exponent in the evaluation of pressurized water reactor (PWR) reactor vessel head penetration nozzles.

7. Remove 10 CFR 50.55a(g)(6)(ii)(A) and associated paragraphs on the augmented examination of the reactor vessel.

8. Add a paragraph (D) Reactor Vessel Head Inspections to 10 CFR 50.55a(g)(6)(ii) to require an inservice inspection program augmented by the provisions of ASME Code Case N-729-1, "Alternative Examination Requirements for PWR Reactor Vessel Upper Heads With Nozzles Having Pressure-Retaining Partial-Penetration Welds, Section XI, Division 1" subject to conditions and remove Footnote 10.

9. Add a paragraph (E) Reactor Coolant Pressure Boundary Visual Inspections to 10 CFR 50.55a(g)(6)(ii)—Augmented Inspection of Class 1 Components Fabricated with Alloy 600/82/182 Materials to require an inservice inspection program augmented by the provisions of ASME Code Case N-722, "Additional Inspections for PWR Pressure Retaining Welds in Class 1 Pressure Boundary Components Fabricated with Alloy 60/82/182 Materials, Section XI, Division 1" subject to conditions.

**II. Summary of Proposed Revisions to 10 CFR 50.55a**

The changes to paragraphs (b) and (g) of 10 CFR 50.55a are discussed below. Paragraphs (a), (c), (d), (e), and (f) would remain unchanged because the requirements in these sections would not be changed by virtue of the incorporating by reference of the 2004 Edition of the ASME Code, Sections III and XI, and the OM Code.

*Section III, ASME BPV Code*

The proposed rule would revise § 50.55a(b)(1) to incorporate by

reference the 2004 Edition of Section III of the ASME BPV Code. The NRC does not propose to adopt any limitations with respect to the 2004 Edition of Section III.

#### *Section XI, ASME BPV Code*

The proposed rule would revise § 50.55a(b)(2) to incorporate by reference the 2004 Edition of the ASME BPV Code, Section XI, Division 1, subject to the proposed modifications and limitations discussed below:

#### 10 CFR 50.55a(b)(2)(xi)—Class 1 piping

Paragraph 50.55a(b)(2)(xi) states that “licensees may not apply IWB-1220, “Components Exempt from Examination,” of Section XI, 1989 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, and shall apply IWB-1220, 1989 Edition.” Subarticle IWB-1220 of the 1989 Edition of the ASME Section XI, exempts certain components (such as small bore piping) from the volumetric and surface examinations. However, welds or portions of welds that are inaccessible due to being encased in concrete, buried underground, located inside a penetration, or encapsulated by guard pipe were included in components for exemption from examination and incorporated in the edition and addenda of the ASME Section XI after the 1989 Edition. The NRC did not agree with the incorporation of these types of welds for exemption from examination because the NRC believed that these welds should be examined to monitor their structural integrity. Therefore, the NRC prohibited the use of 1989 addenda through the latest editions and addenda of the ASME Section XI regarding the application of IWB-1220 in Paragraph 10 CFR 50.55a(b)(2)(xi) (64 FR 51394).

The proposed revision would remove 10 CFR 50.55a(b)(2)(xi), thereby permitting the use of ASME Section XI IWB-1220 of any edition or addenda of ASME Section XI incorporated by reference in 10 CFR 50.55a. The condition placed upon Section XI, IWB-1220 in 10 CFR 50.55a(b)(2)(xi) is no longer necessary because (1) licensees can select an alternate weld for inspection that does not have limitations, (2) licensees have committed to perform augmented inspections of break exclusion zone (BEZ) welds, which are located in inaccessible areas such as containment penetrations or encapsulated by guard pipe, to the extent practical under the BEZ criteria, (3) Boiling water reactor (BWR) licensees have followed the provisions of Generic Letter 88-01,

“NRC Position on IGSCC [intergranular stress corrosion cracking] in BWR Austenitic Stainless Steel Piping,” and the associated NRC report, NUREG-0313, “Technical Report on Material Selection and Process Guidelines for BWR Coolant Pressure Boundary Piping,” and the provisions of the BEZ criteria (Reference: Branch Technical Position MEB 3-1 attached to Standard Review Plan 3.6.2) apply to the examination of the welds such as those that are located inside containment penetrations or encapsulated by guard pipe, and (4) licensees of plants whose construction permits were issued after January 1, 1971 are required to have ASME Class 1 and Class 2 components designed and provided with access to enable the performance of inservice inspections.

#### 10 CFR 50.55a(b)(2)(xiii)—Mechanical Clamping Devices

Paragraph 50.55a(b)(2)(xiii) permits licensees to use the provisions of Code Case N-523-1, “Mechanical Clamping Devices for Class 2 and 3 Piping.” The proposed revision would remove 10 CFR 50.55a(b)(2)(xiii) because Code Case N-523-2, which provides updated requirements to those of Code Case N-523-1, has been accepted in RG 1.147, Revision 14, “Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,” which is incorporated by reference into 10 CFR 50.55a(g)(4)(I) and 10 CFR 50.55a(g)(4)(ii).

#### 10 CFR 50.55a(b)(2)(xv)—Appendix VIII Specimen Set and Qualification Requirements

Paragraph 50.55a(b)(2)(xv) specifies implementation of Appendix VIII of Section XI, the 1995 Edition through the 2001 Edition of the ASME BPV Code with regard to ultrasonic examinations of piping systems. The proposed change would reference and allow the use of the 2004 Edition of the ASME Code.

#### 10 CFR 50.55a(b)(2)(xx)—System Leakage Tests

Paragraph 50.55a(b)(2)(xx) would be revised to require that after system leakage tests performed during repair and replacement activities by welding or brazing under the 2003 Addenda through the latest edition and addenda incorporated by reference in 10 CFR 50.55a(b)(2), NDE must be performed in accordance with IWA-4540(a)(2) of the 2002 Addenda of Section XI. This provision would require that (1) the NDE method and acceptance criteria of the 1992 edition or later of Section III be met prior to returning the system to service, and that (2) a system leakage test be performed in accordance with

IWA-5000 prior to or as part of returning the system to service.

Subarticle IWA-4540(a) of the 1995 edition of ASME Section XI requires that after welding on a pressure retaining boundary or installing an item by welding or brazing, a system hydrostatic pressure test be performed. The industry asserted that the hydrostatic pressure test creates a significant hardship. Subsequently, the ASME Committee developed Code Case N-416-3, “Alternative Pressure Test Requirements for Welded Repairs or Installation of Replacement Items by Welding Class 1, 2, and 3, Section XI, Div. 1,” which provides an alternative to the hydrostatic pressure test. (NRC has accepted Code Case N-416-3 in RG 1.147, Revision 14 which has been incorporated by reference and approved in 10 CFR 50.55a (70 FR 56809; Sept 29, 2005).

Code Case N-416-3 allows that instead of performing a hydrostatic pressure test for welding and brazing repair/replacement activities, performing a system leakage test if two requirements are met. The first requirement is that a NDE be performed on welded or brazed repairs and fabrication and installation joints in accordance with the methods and acceptance criteria of the applicable subsection of the 1992 Edition of Section III. Depending on the category of the weld, the NDE must consist of, in most cases, radiography and examination by either the liquid penetrant or magnetic particle method. The second requirement is that prior to or immediately upon return to service, a visual examination (VT-2) of welded or brazed repairs, fabrication, and installation joints be performed in conjunction with a system leakage test at nominal operating pressure and temperature in accordance with paragraph IWA-5000 of the 1992 edition of Section XI. The technical provisions of ASME Code Case N-416-3 were incorporated into the 2001 Edition of ASME Section XI, IWA-4540(a) and maintained, with minor editorial changes, through the 2002 Addenda to ASME Section XI. The 2003 Addenda of the Code, IWA-4540(a) eliminated reference to the NDE requirements of the 1992 Edition of Section III. When the ASME developed the 2003 Addenda, the arguments in support of the Code action state that imposing the NDE requirement in accordance with Section III (i.e., radiography) on all repair and replacement activities is excessively burdensome. The industry argued that the purpose of the radiography requirements is to support the piping

joint efficiency factors used in the design. As such, the requirements are appropriately imposed by the construction code or the design specification but radiography for repair and replacement activities would be excessive.

The industry also contended that a system leakage test compared to a hydrostatic pressure test revealed very few cases in which leakage occurred at the hydrostatic pressure but not at the lower pressure of the system leakage test. Those cases involved only a small amount of leakage and the source of the leakage would not have been detected by additional NDE and is therefore not warranted.

NRC observes that the arguments to eliminate the NDE are from an operational rather than a safety perspective. A safety assessment has not been provided to demonstrate that without volumetric examination, a system leakage pressure test alone provides a level of safety equivalent to a hydrostatic pressure test, only that a volumetric examination is excessively burdensome. NRC therefore concludes that to provide reasonable assurance of adequate protection to public health and safety, when performing a system leakage test in lieu of a hydrostatic test after repair/replacement activities, a NDE must be performed. It must be performed in accordance with the NDE provision in IWA-4540(a)(2) of the 2002 Addenda of Section XI because the agency has already accepted this provision by virtue of approving Code Case N-416-3 in RG 1.147, Revision 14. That provision states that: (a) The NDE method and acceptance criteria of the 1992 edition or later of Section III shall be met prior to return to service; and (b) a system leakage test shall be performed in accordance with IWA-5000 prior to or as part of returning to service.

**10 CFR 50.55a(b)(2)(xxi)—Table IWB-2500-1 Examination Requirements**

Paragraph 10 CFR 50.55a(b)(2)(xxi)(A) would be revised to be consistent with the condition for Code Case N-648-1, "Alternative Requirements for Inner Radius Examination of Class 1 Reactor Vessel Nozzles, Section XI, Division 1," in RG 1.147, Revision 14, which requires the assumption of a limiting flaw aspect ratio when using the allowable flaw length criteria in Table IWB-3512-1 during an enhanced visual examination. *The proposed revision would state:* "A visual examination with enhanced magnification that has a resolution sensitivity to detect a 1-mil (0.001 inch) width wire or crack, using the allowable flaw length criteria in Table IWB-3512-1, 1997 Addenda

through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, with a limiting assumption on the flaw aspect ratio (i.e.,  $a/l=0.5$ , where  $a$  and  $l$  are the depth and length of the crack, respectively), may be performed instead of an ultrasonic examination \* \* \*. This limitation is needed because visual examination cannot determine the depth of cracks. A visual examination requirement may be applied only when a limiting flaw aspect ratio of 0.5 is assumed. A flaw aspect ratio of less than 0.5 would not be conservative. As shown in Table IWB-3512-1, there are no flaw aspect ratios higher than 0.5.

**10 CFR 50.55a(b)(2)(xxviii)—Evaluation Procedure and Acceptance Criteria for PWR Reactor Vessel Head Penetration Nozzles**

In the 2004 Edition of ASME Section XI, IWA-3660 specifies evaluation procedure and acceptance criteria for flaws that are detected in upper and lower reactor vessel head penetration nozzles in PWRs. The procedure and acceptance criteria in IWB-3660 were adopted from Code Case N-694-1, "Evaluation Procedure and Acceptance Criteria for PWR Reactor Vessel Head Penetration Nozzles Section XI, Division 1." Under IWB-3660, IWB-3662 specifies that the flaw shall be evaluated using analytical procedures such as those described in non-mandatory Appendix O, "Evaluation of Flaws in PWR Reactor Vessel Upper Head Penetration Nozzles," to the ASME Code, Section XI. There is a typographical error in paragraph O-3220(b), equation  $S_R = [1 - 0.82R]^{-22}$ . The exponent should be  $-2.2$ , not  $-22$ . Paragraph 50.55a(b)(2)(xxviii) would be added to the regulation to ensure that the correct exponent is used. The exponent in Appendix O was shown to be erroneous by an NRC report, NUREG/CR-6721, "Effects of Alloy Chemistry, Cold Work, and Water Chemistry on Corrosion Fatigue and Stress Corrosion Cracking of Nickel Alloys and Welds," April 2001.

**10 CFR 50.55a(g)(6)(ii)(A)—Augmented Examination of Reactor Vessel**

Paragraph 50.55a(g)(6)(ii) which requires a one-time augmented inservice inspection programs for those systems and components for which the Commission determines that added assurance of structural reliability is necessary would be removed. Paragraph 50.55a(g)(6)(ii)(A) was incorporated in the regulations in 1992 to require all current licensees to conduct a one-time expedited implementation of the reactor vessel shell weld examinations

specified in the 1989 Edition of the ASME Code, Section XI, Division 1, in item B1.10, "Shell Welds," of Examination Category B-A, "Pressure Retaining Welds in Reactor Vessel," in Table IWB-2500-1 of the ASME Code, Section XI. Since all the licensees have completed the subject augmented examination of the reactor vessel shell welds, the requirements in 10 CFR 50.55a(g)(6)(ii)(A) and associated subparagraphs are no longer needed. Future licensees need not conduct this augmented examination, because new Code provisions should adequately address the degradation to which the augmented examination was directed.

**10 CFR 50.55a(g)(6)(ii)(D)—Augmented Inspection of PWR Reactor Vessel Heads.**

Paragraph 50.55a(g)(6)(ii)(D) of the proposed rule would be added to require licensees to comply with the reactor vessel head inspection requirements of ASME Code Case N-729-1, subject to conditions. Compliance to Code Case N-729-1 with conditions would be equivalent to complying with NRC Order EA-03-009, dated February 11, 2003, and First Revised Order EA-03-009, dated February 20, 2004. Footnote 10 to 10 CFR 50.55a would be removed because Code Case N-729-1, as conditioned, would replace the requirements of the NRC Order EA-03-009 cited in that footnote. *That footnote states:*

Supplemental inservice inspection requirements for reactor vessel pressure heads have been imposed by Order EA-03-09 issued to licensees of pressurized water reactors. The NRC expects to develop revised supplemental inspection requirements, based in part upon a review of the initial implementation of the order, and will determine the need for incorporating the revised inspection requirements into 10 CFR 50.55a by rulemaking.

Conditions are imposed on Code Case N-729-1 regarding inspection frequency, examination coverage, qualification of ultrasonic examination, and reinspection intervals. These conditions are being imposed to make the requirements in N-729-1 equivalent to those of the Order.

**10 CFR 50.55a(g)(6)(ii)(E)—Augmented Inspection of Class 1 Components Fabricated With Alloy 600/82/182 Materials**

A new paragraph, 10 CFR 50.55a(g)(6)(ii)(E) Reactor Coolant Pressure Boundary Visual Inspections would be added to require all current and future licensees to apply ASME Code Case N-722, with conditions.

The application of ASME Code Case N-722 is necessary because current inspections are inadequate and the safety consequences can be significant. NRC's determination that existing inspections of the reactor coolant pressure boundary (RCPB) are inadequate are based upon the degradation of RPV head penetration nozzles at Davis-Besse and the discovery of leaks and cracking at other plants, such as Oconee and Arkansas Nuclear One Unit 1. The absence of an effective inspection regime could, over time, result in unacceptable circumferential cracking or the degradation of reactor coolant system components by corrosion from leaks in the RCPB. These degradation mechanisms increase the probability of a loss of coolant accident. The inspections required by the 2004 edition of the ASME Code, Section are inadequate because Table IWB-2500-1, "Examination Category B-P of Section XI" only requires a visual examination of the reactor vessel during a system leakage test each refueling outage. Visual inspections may not detect gradual leakage as confirmed by industry experience.

Both the NRC and the industry took short-term actions to address primary water stress corrosion cracking (PWSCC) in the RCS pressure boundary because of limitations of the ASME BPV Code inspection programs to address PWSCC in the RCPB. In addition to issuing bulletins, NRC issued Order EA-03-009 and First Revised Order EA-03-009 to quickly establish interim inspection requirements for RPV upper heads at PWRs. However, these measures addressed the issue only temporarily and for specific locations. The industry also responded with measures, but these were only short term, such as by specifying that a one-time bare-metal visual inspection of all RCS nickel-based alloy components and weld locations be performed within two refueling outages.

ASME also took actions to address PWSCC. An ASME task group concluded that more rigorous inspections than those currently provided by the ASME Code are needed in the areas most susceptible to PWSCC. The task group developed ASME Code Case N-722 to enhance the current ASME Code requirements for detection of leakage and corrosion in the components considered to be susceptible to PWSCC. The code case specifies bare-metal visual examinations for all RCS pressure retaining components fabricated from Alloy 600/82/182 materials. This Code Case was approved by ASME in July 2005 and

was published in Supplement 6 to the 2004 Code Cases; however, the Code Case is not mandatory for industry to follow. The Code Case improves upon existing ASME Code inspection requirements, because it specifies *bare metal* visual examinations; however, such examinations are inadequate. Visual inspections do not always detect through-wall leakage or related corrosion until significant degradation has occurred.

Beyond the base metal visual inspection requirements and frequencies of inspections, ASME Code Case N-722 is relatively limited in scope. The NRC proposes to require non-visual inspection for items where leakage is identified in Class 1 components. The additional non-visual NDE would be required to determine whether circumferential cracking is present in the flawed material and if multiple circumferential flaws have initiated. Leakage detected by visual examination only identifies that a flaw exists, and is not able to characterize flaw orientations and locations. The NRC proposes to require NDE scope expansion once a circumferential flaw is identified in these components because once flaws are found, favorable conditions must be assumed to exist for additional flaws to develop in other similar components in similar environments. Circumferential cracking has occurred and is a particularly serious safety concern because it could, if undetected by NDE, lead to a complete severance of the piping and a loss-of-coolant-accident.

Therefore, the NRC proposes to require the application of Code Case N-722 with additional conditions; namely, to require additional NDE when leakage is detected and expansion of the sample size if a circumferential PWSCC flaw is detected. Operating experience has shown that bare metal visual inspections alone are not sufficient and that NDE is necessary in order to detect cracking.

#### ASME OM Code

The proposed revision to § 50.55a(b)(3) would incorporate by reference the 2004 Edition of the ASME OM Code subject to no new modifications or limitations.

Paragraph (b)(3)(iv)(D) would be revised to be less specific with regard to paragraph references in subsection ISTC [In-service testing, the Code for Operation and Maintenance of Nuclear Power Plants] to eliminate inconsistencies in paragraph numbering. This is considered to be an editorial change that does not affect the intent or implementation of the current

modification regarding the discontinuance of Appendix II condition monitoring programs of check valves.

### III. Generic Aging Lessons Learned Report

In September 2005, the NRC issued, "Generic Aging Lessons Learned (GALL) Report," NUREG-1801, Volumes 1 and 2, Revision 1, for applicants to use in preparing their license renewal applications. The GALL report evaluates existing programs and documents the bases for determining when existing programs are adequate without change or augmentation for license renewal. Section XI, Division 1, of the ASME BPV Code is one of the existing programs in the GALL report that is evaluated as an aging management program (AMP) for license renewal. Subsections IWB, IWC, IWD, IWE, IWF, and IWL of the 2001 Edition up to and including the 2003 Addenda of Section XI of the ASME BPV Code for in-service inspection were evaluated in the GALL report and the conclusions in the GALL report are valid for this edition and addenda.

In the GALL report, Sections XI.M1, "ASME Section XI In-service Inspection, Subsections IWB, IWC, and IWD," XI.S1, "ASME Section XI, Subsection IWE," XI.S2, "ASME Section XI, Subsection IWL," and XI.S3, "ASME Section XI, Subsection IWF," describe the evaluation and technical bases for determining the adequacy of Subsections IWB, IWC, IWD, IWE, IWF, and IWL, respectively. In addition, many other AMPs in the GALL report rely in part, but to a lesser degree, on the requirements in the ASME Code, Section XI.

The NRC has evaluated Subsections IWB, IWC, IWD, IWE, IWF, and IWL of Section XI of the ASME BPV Code, 2004 Edition as part of the § 50.55a amendment process to incorporate by reference the 2004 Edition of the ASME BPV Code to determine if the conclusions of the GALL report also apply to AMPs that rely upon the ASME Code edition that is proposed for incorporation by reference into § 50.55a by this proposed rule. NRC finds that the 2004 Edition of Sections III and XI of the ASME BPV Code are acceptable and the conclusions of the GALL report remain valid. Accordingly, an applicant may use Subsections IWB, IWC, IWD, IWE, IWF, and IWL of Section XI of the 2004 Edition of the ASME BPV Code as acceptable alternatives to the requirements of the 2001 Edition up to and including the 2003 Addenda of the ASME Code, Section XI, referenced in the GALL AMPs in its plant-specific

license renewal application. Similarly, a licensee approved for license renewal that relied on the GALL AMPs may use Subsections IWB, IWC, IWD, IWE, IWF, and IWL of Section XI of the 2004 Edition of the ASME BPV Code and the ASME Code edition and addenda used in the plant-specific license renewal application as acceptable alternatives to the AMPs described in the GALL report. However, a licensee must assess and follow applicable NRC requirements with regard to changes to its licensing basis.

The GALL report identified AMPs of the 2001 Edition through the 2003 Addenda of Section XI of the ASME Code that require augmentation (additional requirements) for license

renewal. These areas that require augmentation also apply when implementing the 2004 edition. A license renewal applicant may either augment its AMPs in these areas as described in the GALL report or propose alternatives for NRC review in its plant-specific license renewal application.

**IV. Availability of Documents**

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated.

Public Document Room (PDR). The NRC Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland.

Rulemaking Web site (Web). The NRC's interactive rulemaking Web site

is located at <http://ruleforum.llnl.gov>. These documents may be viewed and downloaded electronically via this Web site.

NRC's Electronic Reading Room. The NRC's public electronic reading room is located at <http://www.nrc.gov/reading-room/adams.html>.

NRC Staff Contact. Single copies of the **Federal Register** Notice (which includes the draft Environmental Assessment) and draft Regulatory Analysis can be obtained from Lee Banic, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 or at (301) 415-2771, or via e-mail at: [mjb@nrc.gov](mailto:mjb@nrc.gov).

Document	PDR	Web	ADAMS No.	NRC staff
ASME BPV Code*			N/A	X
ASME OM Code*			N/A	X
ASME Code Case N-722	X		ML070170676	X
ASME Code Case N-729-1	X		ML070170679	X
Proposed <b>Federal Register</b> Notice	X	X	ML070240552	X
Draft Regulatory Analysis	X	X	ML070290497	X
EA-03-009	X	X	ML030380470	X
First Revised NRC Order EA-03-009	X	X	ML040220181	X
GALL Report, NUREG-1801		X	ML012060392	X
			ML012060514	
			ML012060521	
			ML012060539	
Staff Requirements Memorandum (SRM) dated September 10, 1999			ML003751061	
RG 1.147, Revision 14	X	X	ML052510117	X

\*Available on the ASME Web site.

**V. Plain Language**

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

**VI. Voluntary Consensus Standards**

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires agencies to use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. Pub. L. 104-113 requires Federal agencies to use industry consensus standards to the extent practical; it does not require Federal agencies to endorse a standard in its entirety. The law does not prohibit an agency from generally adopting a

voluntary consensus standard while taking exception to specific portions of the standard if those provisions are deemed to be "inconsistent with applicable law or otherwise impractical." Furthermore, taking specific exceptions furthers the Congressional intent of Federal reliance on voluntary consensus standards because it allows the adoption of substantial portions of consensus standards without the need to reject the standards in their entirety because of limited provisions which are not acceptable to the agency.

The NRC is proposing to amend its regulations to incorporate by reference a more recent edition of Sections III and XI of the ASME BPV Code and ASME OM Code, for construction, in-service inspection, and in-service testing of nuclear power plant components. ASME BPV and OM Codes are national consensus standards developed by participants with broad and varied interests, in which all interested parties (including the NRC and licensees of nuclear power plants) participate. In an SRM dated September 10, 1999, the Commission indicated its intent that a

rulemaking identify all parts of an adopted voluntary consensus standard that are not adopted and to justify not adopting such parts. The parts of the ASME BPV Code and OM Code that the NRC proposes not to adopt, or to partially adopt, are identified in Section 2 of the preceding section and the draft regulatory analysis. The justification for not adopting parts of the ASME BPV Code, as set forth in these statements of consideration and the draft regulatory analysis for this proposed rule, satisfy the requirements of Section 12(d)(3) of Pub. L. 104-113, Office of Management and Budget (OMB) Circular A-119, and the Commission's direction in the SRM dated September 10, 1999.

In accordance with the National Technology Transfer and Advancement Act of 1995 and OMB Circular A-119, the NRC is requesting public comment regarding whether other national or international consensus standards could be endorsed as an alternative to the ASME BPV Code and the ASME OM Code.

## VII. Finding of No Significant Environmental Impact: Availability

This proposed action is in accordance with NRC's policy to incorporate by reference in 10 CFR 50.55a new editions and addenda of the ASME BPV and OM Codes to provide updated rules for constructing and inspecting components and testing pumps, valves, and dynamic restraints (snubbers) in light-water nuclear power plants. ASME Codes are national voluntary consensus standards and are required by the National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, to be used by government agencies unless the use of such a standard is inconsistent with applicable law or otherwise impractical.

NEPA requires Federal government agencies to study the impacts of their "major Federal actions significantly affecting the quality of the human environment" and prepare detailed statements on the environmental impacts of the proposed action and alternatives to the proposed action (United States Code, Vol. 42, Section 4332(C) [42 U.S.C. § 4332(C)]; NEPA § 102(C)).

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

The proposed rulemaking will not significantly increase the probability or consequences of accidents; no changes are being made in the types of effluents that may be released off-site; there is no increase in occupational exposure; and there is no significant increase in public radiation exposure. Some of the proposed changes concerning ensuring the integrity of the RCPB would reduce the probability of accidents and radiological impacts on the public. The proposed rulemaking does not involve non-radiological plant effluents and has no other environmental impact. Therefore, no significant non-radiological impacts are associated with the proposed action.

The determination of this draft environmental assessment is that there will be no significant off-site impact to the public from this action. However, the NRC is seeking public comment of the draft environmental assessment. Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading of this document.

The NRC is sending a copy of the environmental assessment and this proposed rule to every State Liaison Officer and requesting their comments on the environmental assessment.

## VIII. Paperwork Reduction Act Statement

This proposed rule increases the burden on licensees to report requirements and maintain records for examination requirements in ASME Code Section XI IWB-2500(b). The public burden for this information collection is estimated to average 3 hours every ten years per request. Because the burden for this information collection is insignificant, OMB clearance is not required. Existing requirements were approved by the OMB, approval number 3150-0011.

### *Public Protection Notification*

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

## IX. Regulatory Analysis

The NRC has prepared a draft regulatory analysis on this proposed rule. The draft analysis is available for review in the NRC's PDR, located in One White Flint North, 11555 Rockville Pike, Rockville, Maryland. In addition, copies of the draft regulatory analysis may be obtained as indicated in Section 4 of this document. The Commission requests public comment on the draft regulatory analysis and comments may be submitted to the NRC as indicated under the **ADDRESSES** heading.

## X. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this proposed amendment will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed amendment would affect the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the Small Business Size Standards set forth in regulations issued by the Small Business Administration at 13 CFR Part 121.

## XI. Backfit Analysis

The NRC's Backfit Rule in 10 CFR 50.109 states that the Commission shall require the backfitting of a facility only

when it finds the action to be justified under specific standards stated in the rule. Section 50.109(a)(1) defines backfitting as the modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position after issuance of the construction permit or the operating license or the design approval.

Section 50.55a requires nuclear power plant licensees to construct ASME BPV Code Class 1, 2, and 3 components in accordance with the rules provided in Section III, Division 1, of the ASME BPV Code; inspect Class 1, 2, 3, Class MC, and Class CC components in accordance with the rules provided in Section XI, Division 1, of the ASME BPV Code; and test Class 1, 2, and 3 pumps, valves, and dynamic restraints (snubbers) in accordance with the rules provided in the ASME OM Code. This proposed rule would incorporate by reference the 2004 Edition of Section III, Division 1, of the ASME BPV Code; Section XI, Division 1, of the ASME BPV Code; and the ASME OM Code.

Incorporation by reference of more recent editions and addenda of Section III, Division 1, of the ASME BPV Code does not affect a plant that has received a construction permit or an operating license or a design that has been approved, because the edition and addenda to be used in constructing a plant are, by rule, determined on the basis of the date of the construction permit, and are not changed thereafter, except voluntarily by the licensee. Thus, incorporation by reference of a more recent edition and addenda of Section III, Division 1, does not constitute a "backfitting" as defined in § 50.109(a)(1).

Incorporation by reference of more recent editions and addenda of Section XI, Division 1, of the ASME BPV Code and the ASME OM Code affect the ISI and IST programs of operating reactors. However, the Backfit Rule does not apply to incorporation by reference of later editions and addenda of the ASME BPV Code (Section XI) and OM Code. The NRC's policy has been to incorporate later versions of the ASME Codes into its regulations. This practice is codified in § 50.55a which requires licensees to revise their ISI and IST programs every 120 months to the latest

edition and addenda of Section XI of the ASME BPV Code and the ASME OM Code incorporated by reference in § 50.55a that is in effect 12 months prior to the start of a new 120-month ISI and IST interval.

Other circumstances where the NRC does not apply the Backfit Rule to the endorsement of a later Code are as follows:

(1) When the NRC takes exception to a later ASME BPV Code or OM Code provision but merely retains the current existing requirement, prohibits the use of the later Code provision, limits the use of the later Code provision, or supplements the provisions in a later Code, the Backfit Rule does not apply because the NRC is not imposing new requirements. However, the NRC explains any such exceptions to the Code in the Statement of Considerations and regulatory analysis for the rule;

(2) When an NRC exception relaxes an existing ASME BPV Code or OM code provision but does not prohibit a licensee from using the existing Code provision, the Backfit Rule does not apply because the NRC is not imposing new requirements and;

(3) Modifications and limitations imposed during previous routine updates of paragraph 50.55a have established a precedent for determining which modifications or limitations are backfits or require a backfit analysis (e.g., final rule dated October 1, 2004 (69 FR 58804). The application of the backfit requirements to modifications and limitations in the current proposed rule are consistent with the application of backfit requirements to modifications and limitations in previous rules.

There are some circumstances in which the endorsement of a later ASME BPV Code or OM Code introduces a backfit. In these cases, the NRC would perform a backfit analysis or documented evaluation in accordance with paragraph 50.109. These include the following:

(1) When the NRC endorses a later provision of the ASME BPV Code or OM Code that takes a substantially different direction from the existing requirements, the action is treated as a backfit, see, e.g., 61 FR 41303 (August 8, 1996).

(2) When the NRC requires implementation of later ASME BPV Code or OM Code provision on an expedited basis, the action is treated as a backfit. This applies when implementation is required sooner than it would be required if the NRC simply endorsed the Code without any expedited language, see, e.g., 64 FR 51370 (September 22, 1999).

(3) When the NRC takes an exception to a ASME BPV Code or OM Code provision and imposes a requirement that is substantially different from the existing requirement as well as substantially different than the later Code, see, e.g., 67 FR 60529 (September 26, 2002).

The backfitting discussion for the proposed revisions to 10 CFR 50.55a is set forth below:

*1. Remove 10 CFR 50.55a(b)(2)(xi) Concerning Components Exempt From Examination*

This change would remove an existing limitation on the use of 1989 Addenda and later editions and addenda of the ASME Code, Section XI, regarding the use of subarticle IWB-1220 in the examinations of welds in the inaccessible locations. Licensees have either committed to perform augmented inspection or have followed the provisions of Generic Letter 88-01 and NUREG-0313 in examining the inaccessible welds. Therefore, this change is not considered as a backfit under 10 CFR 50.109.

*2. Remove 10 CFR 50.55a(b)(2)(xiii) Concerning the Provisions of Code Case N-523-1, "Mechanical Clamping Devices for Class 2 and 3 Piping."*

Paragraph 10 CFR 50.55a(b)(2)(xiii) states that "Licensees may use the provisions of Code Case N-523-1, "Mechanical Clamping Devices for Class 2 and 3 Piping." Paragraph 10 CFR 50.55a(b)(2)(xiii) does not require, but provides an option for, licensees to use Code Case N-523-1. In 2000, ASME updated Code Case N-523-1 to N-523-2 without changes to technical requirements. Code Case N-523-2, "Mechanical Clamping Devices for Class 2 and 3 Piping," has been accepted in RG 1.147, Revision 14, which is incorporated by reference into paragraphs 10 CFR 50.55a(g)(4)(i) and 10 CFR 50.55a(g)(4)(ii). Code Case N-523-2 may be used by licensees without requesting authorization. According to RG 1.147, Revision 14, Code Case N-523-1 has been superseded by Code Case N-523-2. It is stated in RG 1.147, Revision 14, that "After the ASME annuls a Code Case and the NRC amends 10 CFR 50.55a and this guide [RG 1.147], licensees may not implement that Code Case for the first time. However, a licensee who implemented the Code Case prior to annulment may continue to use that Code Case through the end of the present ISI interval. An annulled Code Case cannot be used in the subsequent ISI interval unless implemented as an approved alternative under 10 CFR

50.55a(a)(3) \* \* \*" The NRC has not annulled or prohibited the use of Code Case N-523-1 in RG 1.147, Revision 14. Licensees who have used Code Case N-523-1 may continue to use it. The NRC is not imposing new requirements by removing 10 CFR 50.55a(b)(2)(xiii). Therefore, the removal of 10 CFR 50.55a(b)(2)(xiii) is not a backfit.

*3. Modify 10 CFR 50.55a(b)(2)(xv) To Implement Appendix VIII of Section XI, the 1995 Edition through the 2004 Edition of the ASME BPV Code*

This change would update the edition of the ASME Code in 10 CFR 50.55a(b)(2)(xv), therefore, is not considered as a backfit under 10 CFR 50.109.

*4. Add 10 CFR 50.55a(b)(2)(xx) To Require NDE Provision in IWA-4540(a)(2) of the 2002 Addenda of Section XI When Performing System Leakage Tests*

Subarticle IWA-4540(a)(2) of the 2002 Addenda of the ASME Code, Section XI, requires a NDE be performed in combination with a system leakage test during repair/replacement activities. Subarticle IWA-4540(a)(2) of the 2003 Addenda through later editions and addenda of the ASME Code, Section XI, does not specify a NDE after a system leakage test. The proposed addition would require, as part of repair and replacement activities, that a NDE be performed per IWA-4540(a)(2) of the 2002 Addenda of the ASME Code, Section XI, after a system leakage test is performed per subarticle IWA-4540(a)(2) of the 2003 Addenda through later editions and addenda of the ASME Code, Section XI.

As it is stated above, when the NRC takes exception to a later ASME BPV Code provision but merely retains the existing requirement, prohibits the use of the later Code provision, limits the use of the later Code provision, or supplements the provisions in a later Code, the Backfit Rule does not apply because the NRC is not imposing new requirements. The addition retains the system leakage test requirement in IWA-4540(a)(2) of the 2003 Addenda through the later editions and addenda of the ASME Code, Section XI, but supplements it with the NDE of IWA-4540(a)(2) of the 2002 Addenda of the Code. The proposed addition does not represent a new staff requirement because the NDE requirement is specified in previous addenda of the Code. Therefore, this change is not considered as a backfit under 10 CFR 50.109.

*5. Revise 10 CFR 50.55a(b)(2)(xxi) To Be Consistent With the NRC's Imposed Condition for Code Case N-648-1 in RG 1.147, Revision 14*

This change would align the conditions imposed on visual examinations in 10 CFR 50.55a(b)(2)(xxi) with the conditions imposed on Code Case N-648-1 in RG 1.147, Revision 14 (70 FR 5680; Sept 29, 2005). The imposed conditions do not represent a new staff position. Therefore, this change is not considered as a backfit under 10 CFR 50.109.

*6. Add 10 CFR 50.55a(b)(2)(xxviii) To Correct a Typographical Error Regarding an Exponent in the Evaluation of PWR Reactor Vessel Head Penetration Nozzles*

This change would correct a typographical error in an equation used in the flaw evaluation in the ASME Section XI. Therefore, this change is not considered as a backfit under 10 CFR 50.109.

*7. Remove 10 CFR 50.55a(g)(6)(ii)(A) and Associated Subparagraphs on the Augmented Examination of the Reactor Vessel*

This change would remove a one-time examination requirement which has been completed by all current licensees, and, therefore, is not considered as a backfit under 10 CFR 50.109. Future licensees will be subject to other Code provisions that preclude the need for this one-time examination.

*8. Add Paragraph (D) to 10 CFR 50.55a(g)(6)(ii)—Augmented Inspection of PWR Reactor Vessel Heads*

The requirements in paragraph D, which impose ASME Code Case N-729-1 with conditions, were already imposed on existing licensees under NRC First Revised Order EA-03-009. Therefore, this requirement is not considered a backfit under 10 CFR 50.109(a)(1).

*9. Add Paragraph (E) to 10 CFR 50.55a(g)(6)(ii)—Augmented Inspection of Class 1 Components Fabricated With Alloy 600/82/182 Materials*

The NRC proposes to add 10 CFR 50.55a(g)(6)(ii)(E) to require augmented inspections of Class 1 components fabricated with Alloy 600/82/182 materials. The augmented inspection will consist of the requirements in Code Case N-722 which specifies inservice inspection for PWR ASME Code Class 1 components containing materials susceptible to PWSCC and NRC imposed conditions to the Code Case to require additional NDE when leakage is detected and expansion of the

inspection sample size if a circumferential PWSCC flaw is detected. The intent of conditioning the Code Case is to identify leakage of and prevent unacceptable cracks and corrosion in Class 1 components, which are part of RCPB. The proposed requirements may be considered backfitting under 10 CFR 50.109(a)(1). However, the NRC believes that the requirements are necessary for compliance with Commission requirements and/or license provisions. Therefore a backfit analysis need not be prepared under the "compliance" exception in 10 CFR 50.109(a)(4)(i). The following discussion constitutes the documented evaluation to support the invocation of the compliance exception.

As discussed earlier in Section 2, "10 CFR 50.55a(g)(6)(ii)(E)—Augmented Inspection of Class 1 Components Fabricated with Alloy 600/82/182 Materials," failure of the RCPB could result in unacceptable challenges to reactor safety systems that, combined with other failures, could lead to the release of radioactivity to the environment. Based on PWSCC experience in PWRs, the NRC concludes that there is a reasonable likelihood that PWR licensees would not be in compliance with appropriate regulatory requirements and current licensing basis with respect to structural integrity and leak-tightness throughout the term of the operating license, should PWSCC occur in their plants. The general design criteria (GDC) for nuclear power plants (Appendix A to 10 CFR Part 50) provide the regulatory requirements for the NRC's assessment of the potential for, and consequences of, degradation of the RCPB. The applicable GDCs include GDC 14 and GDC 31. GDC 14 specifies that the RCPB be designed, fabricated, erected, and tested so as to have an extremely low probability of abnormal leakage, of rapidly propagating failure, and of gross rupture. GDC 31 specifies that the probability of rapidly propagating fracture of the RCPB be minimized.

The nuclear plants that were licensed before GDC were incorporated in 10 CFR Part 50 also would not be in compliance with their licensing basis which requires maintenance of the structural and leakage integrity of the RCPB.

Leakage of primary system coolant as a result of PWSCC in Alloy 600/82/182 material is a non-compliance with GDC 14 and 31 and licensing bases because there have been many cases of leakage as a result of PWSCC of Alloy 600/82/182 material in PWRs. Therefore, leakage as a result of PWSCC has not been shown to be of extremely low

probability (i.e. a non-compliance with GDC 14). In addition, the operating experience has shown that the crack growth rate of PWSCC in Alloy 600/82/182 material can be rapid. If PWSCC is not detected and removed, a crack, especially a circumferential crack in a pipe, would increase the probability of rapidly propagating fracture of RCPB (i.e. a non-compliance with GDC 31). Therefore, PWSCC in Alloy 600/82/182 material, if undetected, would be detrimental to the structural and leakage integrity of the RCPB. Code Case N-722 with conditions provides inspection requirements to detect PWSCC so that licensees can repair or replace the affected components, thereby maintaining the structural and leakage integrity of the RCPB, assuring an extremely low probability of abnormal leakage, and the minimizing the probability of a rapidly propagating fracture of the RCPB.

The NRC concludes that licensees will not be in compliance with GDC and their licensing basis for structural and leakage integrity of Class 1 components that were made of Alloy 600/82/182 material throughout the term of their license (including any renewal periods) absent the imposition of Code Case N-722 with conditions. The NRC concludes, therefore, that the proposed 10 CFR 50.55a(g)(6)(ii)(E) is a compliance backfit under 10 CFR 50.109(a)(4)(i).

**List of Subjects in 10 CFR Part 50**

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

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 50.

**PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES**

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

**Authority:** Secs 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244,

1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(d), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 50.55a is amended by revising the introductory text of paragraphs (b)(1) and (b)(2), removing and reserving paragraphs (b)(2)(xi) and (b)(2)(xiii), revising the introductory text of paragraph (b)(2)(xv) and paragraphs (b)(2)(xx) and (b)(2)(xxi)(A), adding paragraph (b)(2)(xxviii), revising the introductory text of paragraph (b)(3) and paragraph (b)(3)(iv)(D), removing and reserving paragraph (g)(6)(ii)(A), adding paragraphs (g)(6)(ii)(D) and (g)(6)(ii)(E), and removing Footnote 10.

**§ 50.55a Codes and standards.**

\* \* \* \* \*

(b) \* \* \*

(1) As used in this section, references to Section III of the ASME Boiler and Pressure Vessel Code refer to Section III, and include the 1963 Edition through 1973 Winter Addenda, and the 1974 Edition (Division 1) through the 2004 Edition (Division 1), subject to the following limitations and modifications:

\* \* \* \* \*

(2) As used in this section, references to Section XI of the ASME Boiler and Pressure Vessel Code refer to Section XI, and include the 1970 Edition through the 1976 Winter Addenda, and the 1977 Edition (Division 1) through the 2004 Edition (Division 1), subject to the following limitations and modifications:

\* \* \* \* \*

(xi) [Reserved]

\* \* \* \* \*

(xiii) [Reserved]

\* \* \* \* \*

(xv) *Appendix VIII Specimen Set and Qualification Requirements.* The following provisions may be used to modify implementation of Appendix VIII of Section XI, 1995 Edition through the 2004 Edition. Licensees choosing to

apply these provisions shall apply all of the following provisions under this paragraph except for those in § 50.55a(b)(2)(xv)(F) which are optional.

\* \* \* \* \*

(xx) *System Leakage Tests.* (A) When performing system leakage tests in accordance with IWA-5213(a), 1997 through 2002 Addenda, the licensee shall maintain a 10-minute hold time after test pressure has been reached for Class 2 and Class 3 components that are not in use during normal operating conditions. No hold time is required for the remaining Class 2 and Class 3 components provided that the system has been in operation for at least 4 hours for insulated components or 10 minutes for uninsulated components.

(B) The NDE provision in IWA-4540(a)(2) of the 2002 Addenda of Section XI must be applied when performing system leakage tests after repair and replacement activities performed by welding or brazing on a pressure retaining boundary using the 2003 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section.

(xxi) \* \* \*

(A) The provisions of Table IWB-2500-1, Examination Category B-D, Full Penetration Welded Nozzles in Vessels, Item B3.40 and B3.60 (Inspection Program A) and Items B3.120 and B3.140 (Inspection Program B) in the 1998 Edition must be applied when using the 1999 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section. A visual examination with enhanced magnification that has a resolution sensitivity to detect a 1-mil width wire or crack, utilizing the allowable flaw length criteria in Table IWB-3512-1, 1997 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, with a limiting assumption on the flaw aspect ratio (i.e., a/l=0.5), may be performed instead of an ultrasonic examination.

\* \* \* \* \*

(xxviii) *Evaluation Procedure and Acceptance Criteria for PWR Reactor Vessel Head Penetration Nozzles.* When performing flaw growth calculations in accordance with non-mandatory Appendix O of Section XI of the ASME Code, as permitted by IWB-3660, the licensee shall use exponent -2.2 as the exponent in the S<sub>R</sub> equation in Subarticle O-3220.

(3) As used in this section, references to the OM Code refer to the ASME Code for Operation and Maintenance of Nuclear Power Plants, and include the 1995 Edition through the 2004 Edition

subject to the following limitations and modifications:

\* \* \* \* \*

(iv) \* \* \*

(D) The applicable provisions of subsection ISTC must be implemented if the Appendix II condition monitoring program is discontinued.

\* \* \* \* \*

(g) \* \* \*

(6) \* \* \*

(ii) \* \* \*

(A) [Reserved]

\* \* \* \* \*

(D) *Reactor Vessel Head Inspections.*

(1) All licensees of pressurized water reactors shall augment their inservice inspection program by implementing ASME Code Case N-729-1 subject to the conditions specified in paragraphs (g)(6)(ii)(D)(2) through (6) of this section.

(2) Item B4.40 of Table 1 must be inspected at least every fourth refueling outage or at least every seven calendar years, whichever occurs first, after the first ten-year inspection interval.

(3) Instead of fulfilling the specified 'examination method' requirements for volumetric and surface examinations of Note 6 in Table 1, the licensee shall perform a volumetric or surface examination or both of essentially 100 percent of the required volume or equivalent surfaces of the nozzle tube, as identified by Fig. 2 of ASME Code Case N-729-1. A surface examination must be performed on all J-groove welds. If a surface examination is substituted for a volumetric examination on a portion of a penetration nozzle that is below the toe of the J-groove weld (Point E on Fig. 2 of ASME Code Case N-729-1), the surface examination must be of the inside and outside wetted surfaces of the penetration nozzle not examined volumetrically.

(4) Ultrasonic examinations must be performed using personnel, procedures and equipment that have been qualified by blind demonstration on representative mockups using a methodology that meets the conditions specified in paragraphs (g)(6)(ii)(D)(4)(i) through (iv) of this section instead of using a methodology that satisfies the conditions specified by the qualification requirements of Paragraph-2500 of ASME Code Case N-729-1.

(i) The diameters of pipes in the specimen set shall be within 1/2 in. (13 mm) of the nominal diameter of the qualification pipe size and a thickness tolerance of ± 25 percent of the nominal through-wall depth of the qualification pipe thickness. The specimen set must contain geometric and material

indications that normally require discrimination from primary water stress corrosion cracking (PWSCC) flaws.

(ii) The specimen set must have a minimum of ten (10) flaws that provide an acoustic response similar to that of PWSCC indications. All flaw depths in the specimen set must be greater than 10 percent of the nominal pipe wall thickness. A minimum number of 30 percent of the total flaws must be connected to the outside diameter and 30 percent of the total flaws must be connected to the inside diameter. Further, at least 30 percent of the total flaws must measure from a depth of 10 to 30 percent of the wall thickness and at least 30 percent of the total flaws must measure from a depth of 31 to 50 percent of the wall thickness and be connected to the inside or outside diameter, as applicable. At least 30 percent, but no more than 60 percent, of the flaws must be oriented axially.

(iii) The procedures must identify the equipment and essential variable settings used to qualify the procedures. An essential variable is defined as any variable that affects the results of the examination. The procedure must be requalified when an essential variable is changed to fall outside the demonstration range. A procedure must be qualified using the equivalent of at least three test sets that are used to demonstrate personnel performance. Procedure qualification must require at least one successful personnel performance demonstration.

(iv) The test acceptance criteria for a personnel performance demonstration must meet the detection test acceptance criteria for personnel performance demonstration in Table VIII-S10-1 of Section XI, Appendix VIII, Supplement 10. Examination procedures, equipment, and personnel must be considered qualified for depth sizing only if the root mean square (RMS) error of the flaw depth measurements, as compared to the true flaw depths, does not exceed 1/32-inch (0.8 mm). Examination procedures, equipment, and personnel must be considered qualified for length sizing if the RMS error of the flaw length measurements, as compared to the true flaw lengths, does not exceed 1/16-inch (1.6 mm).

(5) If flaws attributed to PWSCC have been identified, whether acceptable or not for continued service under Paragraphs -3130 or -3140 of ASME Code Case N-729-1, the reinspection interval must be each refueling outage instead of the reinspection intervals required by Table 1, Note (8) of ASME Code Case N-729-1.

(6) Appendix I of ASME Code Case N-729-1 must not be implemented without prior NRC approval.

(E) *Reactor Coolant Pressure Boundary Visual Inspections.* (1) All licensees of pressurized water reactors shall augment their inservice inspection program by implementing ASME Code Case N-722 subject to the conditions specified in paragraphs (g)(6)(ii)(E)(2) through (4) of this section. The inspection requirements of ASME Code Case N-722 only apply to components fabricated with Alloy 600/82/182 materials not mitigated by weld overlay or stress improvement.

(2) If a visual examination determines that leakage is occurring from a specific item listed in Table 1 of ASME Code Case N-722 that is not exempted by the ASME Code, Section XI, IWB-1220(b)(1), additional actions must be performed to characterize the location, orientation, and length of crack(s) in Alloy 600 nozzle wrought material and location, orientation, and length of crack(s) in Alloy 82/182 butt welds. Alternatively, licensees may replace the Alloy 600/82/182 materials in all the components under the item number of the leaking component.

(3) If the actions in paragraph (g)(6)(ii)(E)(2) of this section determine that a flaw is circumferentially oriented and potentially a result of primary water stress corrosion cracking, licensees shall perform non-visual NDE inspections of components that fall under that ASME Code Case N-722 item number. The number of components inspected must equal or exceed the number of components found to be leaking under that item number. If circumferential cracking is identified in the sample, non-visual NDE must be performed in the remaining components under that item number.

(4) If ultrasonic examinations of butt welds are used to meet the NDE requirements in paragraphs (g)(6)(ii)(E)(2) or (g)(6)(ii)(E)(3) of this section, they must be performed using the appropriate supplement of Section XI, Appendix VIII of the ASME Boiler and Pressure Vessel Code.

\* \* \* \* \*

Dated at Rockville, Maryland, this 26th day of March, 2007.

For the U.S. Nuclear Regulatory Commission.

**Luis A. Reyes,**  
Executive Director.

[FR Doc. E7-6379 Filed 4-4-07; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-27768; Directorate Identifier 2006-NM-174-AD]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Model A330 and A340 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 Airbus Model A330 and A340 airplanes. This proposed AD would require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors caused by latent failures, alterations, repairs, or maintenance actions, could result in fuel tank explosions and consequent loss of the airplane.

**DATES:** We must receive comments on this proposed AD by May 7, 2007.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL-401, Washington, DC 20590.

- *Fax:* (202) 493-2251.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

**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 submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2007-27768; Directorate Identifier 2006-NM-174-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

##### Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

##### Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection

Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21-78, and subsequent Amendments 21-82 and 21-83).

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

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

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

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

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, notified us that an unsafe condition may exist on all Airbus Model A330 and A340 airplanes. The EASA advises that Airbus has issued new fuel airworthiness limitations (FALs) to address failure conditions for which an unacceptable probability of ignition risk could exist if specific tasks or practices or both are not performed in accordance with the manufacturer's requirements. The new FALs are intended to satisfy the JAA's Interim Policy of Fuel Tank Safety and SFAR 88 requirements.

##### Relevant Service Information

Airbus has issued A330 ALS—Airworthiness Limitations Section and A340 ALS—Airworthiness Limitations Section, both dated March 23, 2006. The Airbus A330 ALS and A340 ALS are repositories for stand-alone documents that are approved independently from each other, and both comprise the following documents:

- ALS Part 1—Safe Life Airworthiness Limitation Items
- ALS Part 2—Damage-Tolerant Airworthiness Limitation Items
- ALS Part 3—Certification Maintenance Requirements
- ALS Part 4—(Reserved)
- ALS Part 5—Fuel Airworthiness Limitations

Airbus A330 ALS Part 5—Fuel Airworthiness Limitations, dated April 11, 2006, refers to Airbus A330 Fuel Airworthiness Limitations, Document 95A.1932/05, Issue 2, dated October 26, 2006 (approved by the EASA on November 17, 2006). Airbus A340 ALS Part 5—Fuel Airworthiness Limitations, Document 95A.1933/05, Issue 1, dated December 19, 2005 (approved by the EASA on April 28, 2006). Section 1, "Maintenance/Inspection Tasks," of Document 95A.1932/05 and Document 95A.1933/05 describes a certain repetitive FAL inspection. A FAL inspection is a periodic inspection of certain features for latent failures that could contribute to an ignition source. Section 2, "Critical Design Configuration Control Limitations," of Document 95A.1932/05 and Document 95A.1933/05 identifies critical design configuration control limitations (CDCCLs). A CDCCL is a limitation requirement to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention

feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The EASA mandated the service information and issued airworthiness directive 2006-0205, dated July 11, 2006 (for Model A340 airplanes); and airworthiness directive 2007-0023, dated January 25, 2007 (for Model A330 airplanes); to ensure the continued airworthiness of these airplanes in the European Union.

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

These airplane models 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 we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems.

#### Costs of Compliance

This proposed AD would affect about 27 airplanes of U.S. registry. The proposed actions 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 \$4,320, or \$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 adding the following new airworthiness directive (AD):

**Airbus:** Docket No. FAA-2007-27768; Directorate Identifier 2006-NM-174-AD.

#### Comments Due Date

- (a) The FAA must receive comments on this AD action by May 7, 2007.

#### Affected ADs

- (b) None.

#### Applicability

(c) This AD applies to all Airbus Model A330-201, A330-202, A330-203, A330-223, A330-243, A330-301, A330-302, A330-303, A330-321, A330-322, A330-323, A330-341, A330-342, and A330-343 airplanes; and Model A340-211, A340-212, A340-213, A340-311, A340-312, A340-313, A340-541, A340-642, and A340-643 airplanes; certificated in any category.

**Note 1:** This AD requires revisions to certain operator maintenance documents to include a new inspection and critical design configuration control limitations (CDCCLs). Compliance with the operator maintenance documents is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections and CDCCLs, the operator may not be able to accomplish the inspection and CDCCLs described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (i) of this AD. The request should include a description of changes to the required inspections and CDCCLs that will preserve the critical ignition source prevention feature of the affected fuel system.

#### Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors caused by latent failures, alterations, repairs, or maintenance actions, could result in fuel tank explosions and consequent loss of the airplane.

#### Compliance

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

#### Revise Airworthiness Limitations Section (ALS) for Model A330 Airplanes

(f) For Model A330-201, A330-202, A330-203, A330-223, A330-243, A330-301, A330-302, A330-303, A330-321, A330-322, A330-323, A330-341, A330-342, and A330-343 airplanes: Do the actions specified in paragraphs (f)(1) and (f)(2) of this AD.

(1) Within 3 months after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness to incorporate Airbus A330 ALS Part 5—Fuel Airworthiness Limitations, dated April 11, 2006, as defined in Airbus A330 Fuel Airworthiness Limitations, Document 95A.1932/05, Issue 2, dated October 26, 2006 (approved by the European Aviation Safety Agency (EASA) on November 17, 2006), Section 1, "Maintenance/Inspection Tasks." For the task identified in Section 1 of Document 95A.1932/05, the initial compliance time starts from the later of the times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, and the repetitive inspection must be accomplished thereafter at the interval

specified in Section 1 of Document 95A.1932/05.

(i) The effective date of this AD.

(ii) The date of issuance of the original French standard airworthiness certificate or the date of issuance of the original French export certificate of airworthiness.

(2) Within 12 months after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness to incorporate Airbus A330 ALS Part 5—Fuel Airworthiness Limitations, dated April 11, 2006, as defined in Airbus A330 Fuel Airworthiness Limitations, Document 95A.1932/05, Issue 2, dated October 26, 2006 (approved by the EASA on November 17, 2006), Section 2, “Critical Design Configuration Control Limitations.”

#### Revise ALS for Model A340 Airplanes

(g) For Model A340–211, A340–212, A340–213, A340–311, A340–312, A340–313, A340–541, A340–642, and A340–643 airplanes: Do the actions specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Within 3 months after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness to incorporate Airbus A340 ALS Part 5—Fuel Airworthiness Limitations, dated April 11, 2006, as defined in Airbus A340 Fuel Airworthiness Limitations, Document 95A.1933/05, Issue 1, dated December 19, 2005 (approved by the EASA on April 28, 2006), Section 1, “Maintenance/Inspection Tasks.” For the task identified in Section 1 of Document 95A.1933/05, the initial compliance time starts from the effective date of this AD, and the repetitive inspection must be accomplished thereafter at the interval specified in Section 1 of Document 95A.1933/05.

(2) Within 12 months after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness to incorporate Airbus A340 ALS Part 5—Fuel Airworthiness Limitations, dated April 11, 2006, as defined in Airbus A340 Fuel Airworthiness Limitations, Document 95A.1933/05, Issue 1, dated December 19, 2005 (approved by the EASA on April 28, 2006), Section 2, “Critical Design Configuration Control Limitations.”

#### No Alternative Inspections, Inspection Intervals, or CDCCLs

(h) Except as provided by paragraph (i) of this AD: After accomplishing the actions specified in paragraph (f) or (g) of this AD, as applicable, no alternative inspections, inspection intervals, or CDCCLs may be used.

#### Alternative Methods of Compliance (AMOCs)

(i)(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

(j) EASA airworthiness directive 2006–0205, dated July 11, 2006; and EASA airworthiness directive 2007–0023, dated January 25, 2007; also address the subject of this AD.

Issued in Renton, Washington, on March 27, 2007.

**Ali Bahrami,**

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–6231 Filed 4–4–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2007–27777; Directorate Identifier 2006–NM–265–AD]

RIN 2120–AA64

#### **Airworthiness Directives; McDonnell Douglas Model DC–8–53, DC–8–55, DC–8F–54, and DC–8F–55 Airplanes; and Model DC–8–60, DC–8–60F, DC–8–70, and DC–8–70F 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 McDonnell Douglas airplanes, identified above. This proposed AD would require a one-time inspection to determine the configuration of the airplane (tee or angle doubler installed on the left and right side of the flat aft pressure bulkhead from Longerons 9 to Longerons 13). This proposed AD would also require repetitive inspections for cracking of the tee or angle doubler, and corrective actions if necessary. This proposed AD results from a report indicating that numerous operators have found cracks on the tee. We are proposing this AD to detect and correct stress corrosion cracking of the tee or angle doubler installed on the flat aft pressure bulkhead. Cracking in this area could continue to progress and damage the adjacent structure, which could result in loss of structural integrity of the airplane.

**DATES:** We must receive comments on this proposed AD by May 21, 2007.

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

- **DOT Docket Web site:** Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- **Government-wide rulemaking Web site:** Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- **Mail:** Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.

- **Fax:** (202) 493–2251.

- **Hand Delivery:** Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for the service information identified in this proposed AD.

**FOR FURTHER INFORMATION CONTACT:** Jon Mowery, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5322; fax (562) 627–5210.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number “FAA–2007–27777; Directorate Identifier 2006–NM–265–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

19477-78), or you may visit <http://dms.dot.gov>.

**Examining the Docket**

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

**Discussion**

We have received a report indicating that numerous operators have found cracks on the flat aft pressure bulkhead tee. The tee is installed on the left and right side of McDonnell Douglas Model DC-8 airplanes that have a flat aft pressure bulkhead. The cracks, which originate in the corner radius of the tee from Longeron 9 to Longeron 13, are a result of stress corrosion. This condition, if not corrected, could result in cracks continuing to progress, and consequent damage the adjacent structure and loss of structural integrity of the airplane.

**Relevant Service Information**

We have reviewed Boeing Alert Service Bulletin DC8-53A081, dated November 14, 2006. The service bulletin describes procedures for doing an initial inspection using one of the following methods as applicable:

- For airplanes not previously repaired (Configuration 1), the service bulletin specifies doing the initial inspection for cracking of the tee installed on the left and right side of the flat aft pressure bulkhead from Longeron 9 to Longeron 13, according to one of three inspection methods specified in the DC-8 Supplemental Inspection Document (SID) L26-011, Volume II, 53-10-18: Methods 01A (High Frequency Eddy Current (HFEC))

and 01B (Ultrasonic) together; or Method 02 (HFEC); or Method 03 (Visual Aided).

- For airplanes previously repaired with an angle doubler that was installed in accordance with DC-8 Structural Repair Manual 53-2-5, Figure 9 (Configuration 2), the service bulletin specifies an initial HFEC inspection for cracking of the angle doubler.
- For airplanes previously repaired with any repair other than one installed in accordance with DC-8 Structural Repair Manual 53-2-5, Figure 9 (Configuration 3), the service bulletin specifies contacting Boeing for instructions.

The service bulletin specifies the following actions, depending on crack findings:

- If no crack is found, the service bulletin specifies repeating the applicable inspection. For Configuration 1 airplanes, the repetitive intervals depend on the inspection type chosen, and range from within 2 years after the previous SID inspection or 600 flight cycles, whichever occurs earlier; to within 8 years after the previous SID inspection or 17,400 flight cycles, whichever occurs earlier. For Configuration 2 airplanes, the repetitive interval is 4,500 flight cycles.
- If any crack is found, the service bulletin specifies the corrective action of repairing the crack before further flight. The repair involves installing an angle doubler (if not previously installed) or removing the cracked angle doubler and installing a new one (if previously installed). The service bulletin states that the repetitive interval after repair is 4,500 flight cycles, and only the HFEC inspection type is specified for the repetitive inspections.

The service bulletin also specifies that, for Configuration 1 airplanes, if maintenance records show that the flat aft pressure bulkhead tee was previously inspected using one of the three inspection methods specified in the DC-8 SID L26-011, Volume II, 53-10-18, and no crack was found, the

inspections may be continued at the applicable repetitive interval specified for Configuration 1 airplanes on which no crack is found during the initial inspection.

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

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

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

**Difference Between the Proposed AD and the 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 321 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 139 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	Cost per airplane	Fleet cost
Inspection to determine the configuration of the airplane, and to determine previous inspection method.	1	\$80	\$11,120.
Configuration 1, per inspection cycle .....	11	\$880, per inspection cycle	Up to \$122,320, per inspection cycle.

ESTIMATED COSTS—Continued

Action	Work hours	Cost per air-plane	Fleet cost
Configuration 2, per inspection cycle .....	5	\$400, per inspection cycle	Up to \$55,600, 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):

**McDonnell Douglas:** Docket No. FAA–2007–27777; Directorate Identifier 2006–NM–265–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by May 21, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to McDonnell Douglas Model DC–8–53, DC–8–55, DC–8–61, DC–8–61F, DC–8–62, DC–8–62F, DC–8–63, DC–8–63F, DC–8–71, DC–8–71F, DC–8–72, DC–8–72F, DC–8–73, DC–8–73F, DC–8F–54, and DC–8F–55 airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin DC8–53A081, dated November 14, 2006.

**Unsafe Condition**

(d) This AD results from a report indicating that numerous operators have found cracks on the tee installed on the left and right side of the flat aft pressure bulkhead from Longerons 9 to Longerons 13. We are issuing this AD to detect and correct stress corrosion cracking of the tee or angle doubler installed on the flat aft pressure bulkhead. Cracking in this area could continue to progress and damage the adjacent structure, which could result in loss of structural integrity of the airplane.

**Compliance**

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

**Inspections and Related Investigative/Corrective Actions**

(f) For all airplanes: Within 24 months after the effective date of this AD, inspect the left and right side of the flat aft pressure bulkhead from Longerons 9 to Longerons 13 to determine whether a tee is installed (also called Configuration 1 airplanes) or an angle is installed; and if any angle was installed in accordance with the DC–8 Structural Repair Manual 52–2–5, Figure 9 (also called Configuration 2 airplanes), or in accordance with any other repair method (also called Configuration 3 airplanes). A review of airplane maintenance records is acceptable in lieu of this inspection if the applicable installation can be conclusively determined from that review.

(1) For airplanes determined to be either Configuration 1 or Configuration 2: Within 24 months after the effective date of this AD, do the applicable inspection for cracking of the tee or angle doubler, and do all applicable corrective actions before further flight, by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin DC8–53A081, dated November 14, 2006. Repeat the applicable inspection thereafter at the applicable interval specified in Paragraph 1.E, “Compliance,” of Boeing Alert Service Bulletin DC8–53A081, dated November 14, 2006.

(2) For airplanes determined to be Configuration 1 airplanes: A review of the airplane maintenance records to determine if the tee was previously inspected using one of the three inspection methods specified in the DC–8 Supplemental Inspection Document (SID) L26–011, Volume II, 53–10–18; and to determine that no crack was found; is acceptable to determine the type of inspection and corresponding repetitive interval if the inspection type and crack finding can be conclusively determined from that review.

(3) For airplanes determined to be Configuration 3 airplanes: Within 24 months after the effective date of this AD, repair the previous installation. Where Boeing Alert Service Bulletin DC8–53A081, dated November 14, 2006, specifies to contact Boeing for instructions, repair using a method approved in accordance with the procedures specified in paragraph (g) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(g)(1) The Manager, Los Angeles 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) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(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, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on March 29, 2007.

**Ali Bahrami,**

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

[FR Doc. E7-6338 Filed 4-4-07; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-27753; Directorate Identifier 2007-NM-022-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 Airplanes**

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

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

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

It has been found that the fuel quantity probes harnesses installed in the left and right wing stub tanks on some Embraer ERJ-170( ) aircraft models may not be protected in accordance with RBHA/FAR (Regulamento Brasileiro de Homologação Aeronáutica/ Federal Aviation Regulation) 25.981(a) and (b) requirements.

The unsafe condition is potential ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. The proposed AD would require actions that are intended to

address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by May 7, 2007.

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

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

#### **Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Todd Thompson, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1175; fax (425) 227-1149.

#### **SUPPLEMENTARY INFORMATION:**

##### **Streamlined Issuance of AD**

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

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe

condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

#### **Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2007-27753; Directorate Identifier 2007-NM-022-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

#### **Discussion**

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2007-01-02, effective January 15, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

It has been found that the fuel quantity probes harnesses installed in the left and right wing stub tanks on some Embraer ERJ-170( ) aircraft models may not be protected in accordance with RBHA/FAR (Regulamento Brasileiro de Homologação Aeronáutica/ Federal Aviation Regulation) 25.981(a) and (b) requirements.

The unsafe condition is potential ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. The MCAI requires inspection of the fuel quantity probes harnesses and correct reassembly if necessary. You may obtain further information by examining the MCAI in the AD docket.

#### **Relevant Service Information**

EMBRAER has issued Service Bulletin 170-28-0011, dated April 26, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

#### **FAA's Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation

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

#### Differences Between This AD and the MCAI or Service Information

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

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

#### Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 76 products of U.S. registry. We also estimate that it would take about 27 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$164,160, or \$2,160 per product.

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

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

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

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

##### § 39.13 [Amended]

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

**Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Docket No. FAA-2007-27753; Directorate Identifier 2007-NM-022-AD.

#### Comments Due Date

(a) We must receive comments by May 7, 2007.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to EMBRAER Model ERJ 170-100 LR, -100 STD, -100 SE, -100 SU, -200 LR, -200 STD, and -200 SU airplanes; certificated in any category; serial numbers 17000005 through 17000013, 17000015, 17000016, 17000018 through 17000116, 17000118, and 17000119.

#### Subject

(d) Fuel.

#### Reason

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

It has been found that the fuel quantity probes harnesses installed in the left and right wing stub tanks on some Embraer ERJ-170() aircraft models may not be protected in accordance with RBHA/FAR (Regulamento Brasileiro de Homologação Aeronáutica/ Federal Aviation Regulation) 25.981(a) and (b) requirements.

The unsafe condition is potential ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. The MCAI requires inspection of the fuel quantity probes harnesses and correct reassembly if necessary.

#### Actions and Compliance

(f) Within 6,000 flight hours after the effective date of this AD, unless already done, make an inspection in the fuel quantity probes harnesses installed on both wings and reassemble them, as applicable, as described in EMBRAER Service Bulletin 170-28-0011, dated April 26, 2006.

#### FAA AD Differences

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

#### Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1175; fax (425) 227-1149. Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

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

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

#### Related Information

(h) Refer to MCAI Brazilian Airworthiness Directive 2007-01-02, effective January 15, 2007; and EMBRAER Service Bulletin 170-28-0011, dated April 26, 2006; for related information.

Issued in Renton, Washington, on March 26, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate,  
Aircraft Certification Service.

[FR Doc. E7-6236 Filed 4-4-07; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-27776; Directorate Identifier 2006-NM-170-AD]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Model A318, A319, A320, and A321 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 A318-100, A319-100, A320-200, A321-100, and A321-200 series airplanes, and Model A320-111 airplanes. The existing AD currently requires an inspection to determine whether certain braking and steering control units (BSCUs) are installed or have ever been installed. For airplanes on which certain BSCUs are installed or have ever been installed, the existing AD requires an inspection of the nose landing gear (NLG) upper support and corrective action if necessary, and a check of the NLG strut inflation pressure and an adjustment if necessary. For some of these airplanes, the existing AD also requires a revision to the aircraft flight manual to incorporate an operating procedure to recover normal steering in the event of a steering failure. This proposed AD would require repetitive inspections of the NLG upper support, and related investigative/corrective actions in accordance with new service information; and would remove the one-time inspection that was required by the existing AD. This proposed AD also would provide an optional terminating action for the repetitive inspections. This proposed AD results from a report of an incident where an airplane landed with the NLG turned 90 degrees from centerline, and from additional reports of NLG upper support anti-rotation lugs rupturing in service. We are proposing this AD to prevent landings with the NLG turned 90 degrees from centerline,

which could result in reduced controllability of the airplane.

**DATES:** We must receive comments on this proposed AD by May 7, 2007.

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

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.
- Fax: (202) 493-2251.
- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this proposed AD.

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

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "Docket No. FAA-2007-27776; Directorate Identifier 2006-NM-170-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may

review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

#### Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

#### Discussion

On November 16, 2005, we issued AD 2005-24-06, amendment 39-14386 (70 FR 70715, November 23, 2005), for all Airbus Model A318-100, A319-100, A320-200, A321-100, and A321-200 series airplanes, and Model A320-111 airplanes. That AD requires an inspection to determine whether certain braking and steering control units (BSCUs) are installed or have ever been installed. For airplanes on which certain BSCUs are installed or have ever been installed, that AD requires an inspection of the nose landing gear (NLG) upper support and corrective action if necessary, and a check of the NLG strut inflation pressure and an adjustment if necessary. For some of these airplanes, that AD also requires a revision to the aircraft flight manual (AFM) to incorporate an operating procedure to recover normal steering in the event of a steering failure. That AD resulted from a report of an incident where an airplane landed with the NLG turned 90 degrees from centerline. We issued that AD to prevent landings with the NLG turned 90 degrees from centerline, which could result in reduced controllability of the airplane.

#### Actions Since Existing AD Was Issued

Since we issued AD 2005-24-06, several additional NLG upper support anti-rotation lugs have ruptured in service, which could lead to the inability to retract the NLG and possible landings with the nose wheel turned 90 degrees from centerline. Investigations showed that the affected airplanes were all equipped with enhanced manufacturing and maintainability (EMM) BSCU (Standard L4.1 and L4.5). The NLG shock absorber was also found to be over-pressurized on some of these airplanes, which resulted in increased loads on the upper support. As a result,

the manufacturer developed a repetitive boroscope inspection of the NLG upper support lugs and cylinder lugs to replace the one-time inspection, and an optional terminating action for the repetitive inspections.

**Relevant Service Information**

Airbus has issued Service Bulletin A320-32-1310, dated February 8, 2006. The service bulletin describes procedures for doing a records review to determine if the airplane is equipped with or has ever been equipped with an EMM BSCU. For those airplanes that are equipped with an EMM BSCU, the service bulletin describes procedures for doing a repetitive special detailed inspection (boroscopic) for broken or cracked NLG upper support lugs and missing cylinder lugs, and related investigative/corrective actions. The related investigative/corrective actions follow:

- If the upper support anti-rotation lugs are broken or cracked, or if a cylinder lug is missing: Do a pressure check of the NLG shock absorber (weight on and weight off wheels); report the measured pressure, ‘H’ dimension, temperature, and boroscopic inspection findings to Airbus for further assessment; and restore the NLG in accordance with Airbus recommendations.
- If there are no findings: At the initial threshold inspection, do a servicing check (weight on wheels) of the NLG shock absorber. If the pressure is not within permissible tolerance, adjust the pressure and do the servicing check again with the weight off the wheels. If the pressure is not within permissible tolerance with the weight off the wheels, do a full service of the NLG shock absorber. The service

bulletin states that it is not necessary to do these actions again at the repetitive intervals unless there is a finding during the boroscopic inspection.

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 EASA Airworthiness Directive 2006-0174, dated June 21, 2006, to ensure the continued airworthiness of these airplanes in the European Union.

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

These airplane models 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, EASA has kept the FAA informed of the situation described above. We have examined 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 2005-24-06 and would retain the requirements of the existing AD, except for the boroscope inspection required within 90 days specified in paragraph (i)(2), and the repair requirements of paragraph (j) of AD 2005-24-06. This proposed AD would also require accomplishing the actions specified in the service information described

previously, except as discussed under “Differences among the Proposed AD, the EASA Airworthiness Directive, and the Service Bulletin.”

**Differences Among the Proposed AD, the EASA Airworthiness Directive, and the Service Bulletin**

The service bulletin specifies to contact the manufacturer for further assessment of the reported measured pressure, ‘H’ dimension, temperature, and boroscope inspection findings of the NLG shock absorber, but this proposed AD does not require such reporting and assessment. The service bulletin also specifies restoring the NLG in accordance with Airbus recommendations, but this proposed AD would require restoring the NLG in accordance with a method approved by the FAA or the EASA (or its delegated agent).

**Changes to Existing AD**

We have changed the airplane model designations in the applicability and in paragraph (f), “Records Review,” of this proposed AD to be consistent with the parallel EASA airworthiness directive.

We have clarified paragraph (f) of this proposed AD to refer to BSCU standard L4.1 and L4.5, and added that Airbus Service Bulletin A320-32-1310, dated February 8, 2006, is one approved method for doing the records review.

**Costs of Compliance**

This proposed AD would affect about 720 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	Parts	Cost per airplane	Fleet cost
Records review (required by AD 2005-24-06) .....	1	None .....	\$80 .....	\$57,600.
AFM revision (required by AD 2005-24-06) .....	1	None .....	\$80 .....	\$57,600.
Special detailed inspection in accordance with new service information (new proposed action).	1	None .....	\$80, .....	\$57,600, 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 removing amendment 39-14386 (70 FR 70715, November 23, 2005) and adding the following new airworthiness directive (AD):

**Airbus:** Docket No. FAA-2007-27776; Directorate Identifier 2006-NM-170-AD.

#### Comments Due Date

(a) The FAA must receive comments on this AD action by May 7, 2007.

#### Affected ADs

(b) This AD supersedes AD 2005-24-06.

#### Applicability

(c) This AD applies to all Airbus Model A318, A319, A320, and A321 airplanes.

#### Unsafe Condition

(d) This AD results from a report of an incident where an airplane landed with the nose landing gear (NLG) turned 90 degrees from centerline, and from additional reports of NLG upper support anti-rotation lugs rupturing in service. We are issuing this AD to prevent landings with the NLG turned 90

degrees from centerline, which could result in 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.

#### Restatement of Certain Requirements of AD 2005-24-06

#### Records Review

(f) Within 5 days after November 30, 2005 (the effective date of AD 2005-24-06), perform a records review to determine whether the airplane is equipped with or has ever been equipped with an enhanced manufacturing and maintainability (EMM) braking and steering control unit (BSCU) part number (P/N) E21327001 (standard L4.1, installed by Airbus Modification 26965, or Airbus Service Bulletin A320-32-1912) or P/N E21327003 (standard L4.5, installed by Airbus Modification 33376, or Airbus Service Bulletin A320-32-1261). Airbus Service Bulletin A320-32-1310, dated February 8, 2006, is one approved method for doing the records review.

(g) For airplanes on which a records review required by paragraph (f) of this AD conclusively determines that the airplane is not and never has been equipped with a BSCU P/N E21327001 or P/N E21327003, no further action is required by this AD.

#### Airplane Flight Manual (AFM) Revision

(h) For airplanes that are not specified in paragraph (g) of this AD and on which Airbus Modification 31152 has not been incorporated in production (i.e., applicable only to aircraft with steering powered by the green hydraulic system): Within 10 days after November 30, 2005, revise the Limitation Section of the Airbus A318/319/320/321 Aircraft Flight Manual (AFM) to include the following information. This may be done by inserting a copy of this AD into the AFM:

"The ECAM message, in case of a nose wheel steering failure, will be worded as follows:

- "WHEEL N/W STRG FAULT" for aircraft with the FWC E3 and subsequent standards
- "WHEEL N.W STEER FAULT" for aircraft with the FWC E2 Standard.

- If the L/G SHOCK ABSORBER FAULT ECAM caution is triggered at any time in flight, and the WHEEL N/W STRG FAULT ECAM caution is triggered after the landing gear extension:

- When all landing gear doors are indicated closed on ECAM WHEEL page, reset the BSCU:

— A/SKID&N/W STRG—OFF THEN ON

- If the WHEEL N/W STRG FAULT ECAM caution is no longer displayed, this indicates a successful nose wheel re-centering and steering recovery.

- Rearth the AUTO BRAKE, if necessary.

- If the WHEEL N/W STRG FAULT ECAM caution remains displayed, this indicates that the nose wheel steering remains lost, and that the nose wheels are not centered.

— During landing, delay nose wheel touchdown for as long as possible.

— Refer to the ECAM STATUS.

- If the WHEEL N/W STRG FAULT ECAM caution appears, without the L/G SHOCK ABSORBER FAULT ECAM caution:

— No specific crew action is requested by the WHEEL N/W STRG FAULT ECAM caution procedure.

— Refer to the ECAM STATUS."

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

#### New Requirements of This AD

#### Inspection Thresholds

(i) For airplanes that are not specified in paragraph (g) of this AD, at the earlier of the times specified in paragraphs (i)(1) and (i)(2) of this AD: Do a special detailed inspection (boroscopic) for broken or cracked NLG upper support lugs and missing cylinder lugs, and do all applicable related investigative/corrective actions before further flight. Do all actions in accordance with Airbus Technical Note 957.1901/05, dated October 18, 2005, or the Accomplishment Instructions of Airbus Service Bulletin A320-32-1310, dated February 8, 2006. After the effective date of this AD, only Airbus Service Bulletin A320-32-1301, dated February 8, 2006, may be used. Where the service bulletin specifies that restoring the NLG is necessary in accordance with Airbus recommendations, this AD requires restoring the NLG in accordance with a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent). Repeat the inspection thereafter at the applicable interval specified in paragraph (j) or (k) of this AD.

(1) Within 100 flight cycles following an electronic centralized aircraft monitoring (ECAM) caution "L/G SHOCK ABSORBER FAULT" associated with at least one of the following centralized fault display system (CFDS) messages specified in paragraph (i)(1)(i), (i)(1)(ii), or (i)(1)(iii) of this AD.

(i) "N L/G EXT PROX SNSR 24GA TGT POS."

(ii) "N L/G EXT PROX SNSR 25GA TGT POS."

(iii) "N L/G SHOCK ABSORBER FAULT 2526GM."

(2) At the later of the times specified in paragraphs (i)(2)(i) and (i)(2)(ii) of this AD.

(i) Within 20 months, 6,000 flight hours, or 4,500 flight cycles since the date of issuance of the original French standard airworthiness certificate, or French export certificate of airworthiness, whichever occurs first.

(ii) Within 6 months, 1,800 flight hours, or 1,350 flight cycles after the effective date of this AD, whichever occurs first.

#### Repetitive Inspection Intervals

(j) For airplanes not specified in paragraph (g) of this AD that are equipped with EMM BSCU standard L4.1 or L4.5: Repeat the inspection specified in paragraph (i) of this AD thereafter at intervals not to exceed the earliest of 6 months; 1,800 flight hours; 1,350

flight cycles; or 100 flight cycles following certain ECAM cautions and CFDS messages, as specified in paragraph (i)(1) of this AD.

(k) For airplanes not specified in paragraph (g) of this AD that are equipped with EMM BSCU standard L4.8 or a non-EMM BSCU: Repeat the inspection specified in paragraph (i) of this AD thereafter at intervals not to exceed the earliest of 20 months; 6,000 flight hours; 4,500 flight cycles; or 100 flight cycles following certain ECAM cautions and CFDS messages, as specified in paragraph (i)(1) of this AD.

**Note 2:** For the purposes of this AD, a special detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. The examination is likely to make extensive use of specialized inspection techniques and/or equipment. Intricate cleaning and substantial access or disassembly procedure may be required."

#### Optional Terminating Action

(l) For airplanes that are not specified in paragraph (g) of this AD: Installation of an NLG with new upper support anti-rotation lugs and new cylinder lugs, or installation of an NLG that was never driven by EMM BSCU standard L4.1 and L4.5; combined with installation of an EMM BSCU standard L4.8 or a non-EMM BSCU; constitutes terminating action for the requirements of this AD. Do the installations in accordance with a method approved by either the Manager, International Branch, ANM-116; or the EASA (or its delegated agent). Chapter 32 of the Airbus A318/A319/A320/A321 Aircraft Maintenance Manual (AMM) is one approved method for doing the installations.

#### No Report Required

(m) Although Airbus Service Bulletin A320-32-1310, dated February 8, 2006, specifies sending certain inspection results to Airbus, this AD does not include that requirement.

#### Credit Paragraph

(n) Inspections done before the effective date of this AD in accordance with Chapter 12, Subject 12-14-32 of the Airbus A318/A319/A320/A321 AMM, as revised by Airbus A318/A319/A320/A321 AMM Temporary Revision 12-001, dated November 13, 2005, are acceptable for compliance with the requirements of paragraph (i) of this AD.

#### Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, International Branch, ANM-116, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

#### Related Information

(p) EASA airworthiness directive 2006-0174, dated June 21, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on March 26, 2007.

**Ali Bahrami,**

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

[FR Doc. E7-6343 Filed 4-4-07; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD05-07-025]

RIN 1625-AA09

#### Drawbridge Operation Regulations; Wicomico River (North Prong), Salisbury MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the drawbridge operation regulations of two Maryland Department of Transportation (MDOT) bridges: The Main Street and U.S. 50 Bridges, at mile 22.4, across Wicomico River (North Prong) in Salisbury, MD. This proposal would allow the bridges to open on signal if four hours advance notice is given and eliminate the continual attendance of draw tender services while still providing the reasonable needs of navigation.

**DATES:** Comments and related material must reach the Coast Guard on or before May 21, 2007.

**ADDRESSES:** You may mail comments and related material to Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704-5004. The Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (dpb), Fifth Coast Guard District between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

#### SUPPLEMENTARY INFORMATION:

#### Request for Comments

We encourage you to participate in this rulemaking by submitting

comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD05-07-025, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like a return receipt, please enclose a stamped, self-addressed postcard or envelope. We will consider all submittals received during the comment period. We may change this proposed rule in view of them.

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander (dpb), Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

The State Highway Administration (SHA), a division under MDOT, is responsible for the operation of both the Main Street and US 50 Bridges, at mile 22.4, across Wicomico River in Salisbury. SHA requested advance notification for vessel openings and a reduction in draw tender services due to the infrequency of requests for vessel openings of the drawbridges.

The Main Street and US 50 Bridges have vertical clearances of four feet, above mean high water, in the closed-to-navigation position. The existing operating regulations for these drawbridges are set out in 33 CFR § 117.579, which requires the draws to open on signal, except from 7 a.m. to 9 a.m., from 12 noon to 1 p.m. and from 4 p.m. to 6 p.m., the draw need not be opened for the passage of vessels, except for tugs with tows, if at least three hours of advance notice is given, and the reason for passage through the bridges during a closure period is due to delay caused by inclement weather or other emergency or unforeseen circumstances.

Bridge opening data supplied by SHA revealed a significant decrease in yearly openings. In the past three years from 2004 to 2006, the bridges opened for vessels 522, 282 and 157 times, respectively. Due to the infrequency of requests for vessel openings of the drawbridges, SHA requested to change the current operating regulations by requiring the draw spans to open on signal if at least four hours notice is

given year-round by calling the contact telephone number at (410) 430-7561.

### Discussion of Proposed Rule

The Coast Guard proposes to amend 33 CFR 117.579, which governs the Main Street and US 50 Bridges, by revising the paragraph to read that the draws shall open on signal if at least four hours notice is given by calling the telephone contact number at (410) 430-7461. Under this revision, there will no longer be closure periods. All vessels will be required to provide at least four hours notice.

### Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning, and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge. Mariners will no longer have to wait for closure periods to end, which will allow them to plan their trips without requiring a stop, so long as the four hour notice is provided.

### Small Entities

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

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

This proposed rule would not have a significant economic impact on a substantial number of small entities because the rule relieves restrictions to the movement of navigation, as mariners will no longer have to wait for closure periods to end, which will allow them

to plan their trips without requiring a stop, so long as the four hour notice is provided.

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

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, and (757) 398-6222. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

### Federalism

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

### Unfunded Mandates Reform Act

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

### Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise

have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

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

### Protection of Children

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

### Indian Tribal Governments

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

### Energy Effects

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

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

#### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID, and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that 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, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule.

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.579 to read as follows:

#### § 117.579 Wicomico River (North Prong).

The draws of the Main Street and U.S. 50 bridges, mile 22.4, Salisbury, Maryland shall open on signal if at least four hours notice is given by calling the telephone contact number at (410) 430–7461.

Dated: March 29, 2007.

**L. L. Hereth,**

*Rear Admiral, U. S. Coast Guard Commander, Fifth Coast Guard District.*

[FR Doc. E7–6303 Filed 4–4–07; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD08–07–007]

RIN 1625–AA11

#### Regulated Navigation Area; Mississippi River, Eighty-One Mile Point

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to revise the existing regulated navigation area (RNA) for the Lower Mississippi River (LMR) mile marker (MM) 233.9 through South and South West Passes by establishing mandatory check-in procedures for vessels transiting on the waters of the Mississippi River between (MM) 167.5 LMR and 187.9 LMR. This proposed rule is needed to minimize the risk of collisions, allisions, and groundings occurring as a result of vessels meeting unanticipated traffic in the vicinity of 81 Mile Point, MM 178 LMR. This proposed rule would require vessels, subject to the Bridge to Bridge Radiotelephone Act (33 United States Code 26) to notify Vessel Traffic Center Lower Mississippi River, New Orleans (VTC New Orleans) prior to entering or getting underway in this section of the RNA.

**DATES:** Comments and related material must reach the Coast Guard on or before June 4, 2007.

**ADDRESSES:** You may mail comments and related material to Marine Safety Unit Baton Rouge, 6041 Crestmount Drive, Baton Rouge, LA 70809. Marine Safety Unit Baton Rouge maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Unit Baton Rouge between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Todd Peterson, Marine Safety Unit Baton Rouge, at (225) 298–5400.

#### SUPPLEMENTARY INFORMATION:

#### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for

this rulemaking [CGD08–07–007], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Unit Baton Rouge at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

#### Background and Purpose

From 1999 to 2006 there have been 64 reported collisions, allisions, or groundings on the Lower Mississippi River between MM 167.5 and 187.9. There have been 21 allisions, 2 barge breakaways, 13 collisions and 28 groundings. Of these 64 casualties, 3 were categorized by 46 CFR 4 as serious marine incidents and 5 as major marine casualties. These casualties have involved all sectors of the maritime industry including deep draft shipping, towing vessels, and barge fleets and have occurred at high, normal and low water conditions.

A waterways user group subcommittee of the Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC) examined marine casualties on the LMR in the vicinity of 81 Mile Point. This subcommittee consisted of members of the pilots association, towing vessel industry, barge fleets and the Coast Guard. This subcommittee reviewed the location and marine investigation associated with each casualty and subjectively examined river conditions within this RNA. This committee determined that existing waterways management tools may not be sufficient to safely navigate in the vicinity of 81 Mile Point. Providing position reports to VTC New Orleans would allow the Coast Guard to track vessels in this proposed RNA and provide advice to mariners about upcoming traffic in an effort to eliminate meeting and overtaking scenarios at Eighty-One Mile Point.

## Discussion of Rule

Vessels operating within this proposed RNA (MM 167.5 to MM 187.9) would be required to provide position reports to VTC New Orleans at the following locations:

Vessels transiting upriver would provide position reports at MM 167.5 (Sunshine Bridge) and MM 173.7 (Bringier Point Light).

Vessels transiting downriver would provide position reports at MM 187.9 (Cos-mar Light) and 183.9 (Wyandotte Chemical Dock Lights).

Vessels getting underway within this RNA would provide position reports immediately before getting underway and at the above locations when heading upriver or downriver.

Fleet tows operating within their fleet would not be required to report while within the fleet but would provide a position report if they left the fleet or moved into the channel. Position reports would be made on VHF Channel 63A and would provide the name of the vessel, size of tow if applicable including number of loads and empties, destination, and confirm proper operation of their AIS if AIS is required under 33 CFR 164.46. At the time of the position report, the VTC would advise the mariner operating the vessel on upcoming traffic.

## Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. The rule does not prohibit transit, but merely requires checking in with VTS New Orleans utilizing existing equipment. The impacts on routine navigation are expected to be minimal.

## 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 proposed rule

would not have a significant economic impact on a substantial number of small entities. This RNA will not have an impact on a substantial number of small entities because this rule will not obstruct the regular flow of commercial vessel traffic conducting business within the RNA. It does not require the purchase of additional equipment and instead utilizes existing VHF capabilities already required by other laws or regulations.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to Marine Safety Unit Baton Rouge explaining why you think it qualifies and how and to what degree this rule would economically affect it.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please contact LT Todd Peterson, Marine Safety Unit Baton Rouge at (225) 298–5400.

## Collection of Information

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

## Federalism

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

## Unfunded Mandates Reform Act

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

discuss the effects of this rule elsewhere in this preamble.

## Taking of Private Property

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

## Civil Justice Reform

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

## Protection of Children

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

## Indian Tribal Governments

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

## Energy Effects

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

## Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency

provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination 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, we believe that this proposed rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This proposed rule fits in paragraph (34)(g) because it is a regulated navigation area. A preliminary “Environmental Analysis Check List” is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision whether this rule should be categorically excluded from further environmental review.

### List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

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

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

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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. Amend § 165.810 by adding paragraph (g) to read as follows:

### § 165.810 Mississippi River, LA-regulated navigation area.

\* \* \* \* \*

(g) *Movement of vessels in the vicinity of Eighty-One Mile Point, Geary LA mm 167.5–187.9 LMR.* (1) Prior to proceeding upriver past MM 167.5, LMR, Sunshine Bridge, vessels shall contact Vessel Traffic Center (VTC) New Orleans on VHF Channel 63A to check-in. Vessels must provide name, destination, confirm proper operation of their automated identification system (AIS) if required under 33 CFR 164.46 and, if applicable, size of tow and number of loaded and empty barges. At MM 173.7, LMR, Bringier Point Light, ascending vessels shall contact VTC New Orleans and provide a follow-on position check. At both check-in and follow-on position check VTC New Orleans will advise the vessel on traffic approaching Eighty-One Mile Point.

(2) Prior to proceeding downriver past MM 187.9, LMR, COS–MAR Lights, vessels shall contact Vessel Traffic Center (VTC) New Orleans on VHF Channel 63A to check-in. Vessels must provide name, destination, confirm proper operation of their automated identification system (AIS) if required under 33 CFR 164.46 and, if applicable, size of tow and number of loaded and empty barges. At MM 183.9 LMR, Wyandotte Chemical Dock Lights, descending vessels shall contact VTC New Orleans and provide a follow-on position check. At both check-in and follow-on position check VTC New Orleans will advise the vessel on traffic approaching Eighty-One Mile Point.

(3) All vessels getting underway between miles 167.5 and 187.9 must check-in with VTC New Orleans on VHF Channel 63A immediately prior to getting underway and must comply with the respective ascending and descending check-in and follow-on points listed in paragraphs (g)(1) and (g)(2) above.

(4) Fleet vessels must check-in with VTC New Orleans if they leave their respective fleet or if they move into the main channel. Fleet vessels are not required to check-in if they are operating exclusively within their fleet.

Dated: 23 March 2007.

**J. R. Whitehead,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. E7–6305 Filed 4–4–07; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

RIN 1018–AU77

### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Ceanothus ophiochilus* (Vail Lake ceanothus) and *Fremontodendron mexicanum* (Mexican flannelbush)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period, notice of availability of draft economic analysis, and amended Required Determinations.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the proposed designation of critical habitat for two southern California plants: *Ceanothus ophiochilus* (Vail Lake ceanothus) and *Fremontodendron mexicanum* (Mexican flannelbush). We also announce the availability of the draft economic analysis for the proposed critical habitat designations and an amended Required Determinations section of the proposal. The draft economic analysis identifies potential costs will be \$385,000 to \$659,000 in undiscounted dollars over a 20-year period as a result of the proposed designation of critical habitat, including those costs coextensive with listing and recovery. Discounted future costs are estimated to be \$325,000 to \$559,000 (\$22,000 to \$38,000 annualized) at a 3 percent discount rate, or \$272,000 to \$471,000 (\$26,000 to \$44,000 annualized) at a 7 percent discount rate. The amended Required Determinations section provides our determination concerning compliance with applicable statutes and Executive Orders that we have deferred until the information from the draft economic analysis of this proposal was available. We are reopening the comment period to allow all interested parties to comment simultaneously on the proposed rule, the associated draft economic analysis, and the amended Required Determinations section.

**DATES:** We will accept public comments until May 7, 2007.

**ADDRESSES:** Written comments and materials may be submitted to us by any one of the following methods:

(1) *E-mail:* Please submit electronic comments to [fw8cfwocomments@fws.gov](mailto:fw8cfwocomments@fws.gov). Include “RIN 1018–AU77” in the subject line.

Please see the Public Comments Solicited section under **SUPPLEMENTARY INFORMATION**.

(2) *Facsimile*: You may fax your comments to 760/431-5901.

(3) *U.S. mail or hand-delivery*: You may submit written comments and information to Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011.

(4) *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the address listed in the **ADDRESSES** section (telephone: 760/431-9440). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### **SUPPLEMENTARY INFORMATION:**

#### **Public Comments Solicited**

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation for *Ceanothus ophiochilus* and *Fremontodendron mexicanum* published in the **Federal Register** on October 3, 2006 (71 FR 58340), and on our draft economic analysis of the proposed designation. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether it is prudent to designate critical habitat;

(2) Specific information on the amount and distribution of *Ceanothus ophiochilus* or *Fremontodendron mexicanum* habitat, what areas should be included in the designations that were occupied at the time of listing that contain the features that are essential for the conservation of the species, and what areas that were not occupied at the time of listing that are essential to the conservation of the species and why;

(3) Information concerning pollinator species for *Ceanothus ophiochilus* or *Fremontodendron mexicanum* and whether sufficient information exists to determine if such a biological feature should be considered a primary constituent element for either of these species (please see "Primary Constituent Elements" section of this proposed rule for a detailed discussion);

(4) Whether any areas not currently known to be occupied by either species,

but essential to the conservation of either species, should be included in the proposed designation;

(5) Land use designations and current or planned activities in the mapped critical habitat subunits and their possible effects on proposed critical habitat;

(6) The appropriateness of excluding non-Federal lands that contain *Ceanothus ophiochilus* occurrences within areas targeted for conservation within the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) from the final designation of critical habitat under section 4(b)(2) of the Act (see *Exclusions Under Section 4(b)(2) of the Act* for details on the Western Riverside County MSHCP). Please provide information concerning whether the benefits of exclusion of any of these specific areas outweigh the benefits of their inclusion under section 4(b)(2) of the Act. If the Secretary determines the benefits of including these lands outweigh the benefits of excluding them, they will not be excluded from critical habitat;

(7) The appropriateness of excluding lands that contain *Fremontodendron mexicanum* occurrences within areas of the San Diego Multiple Species Conservation Program (MSCP) and areas of the Otay Mountain Wilderness managed by the Bureau of Land Management (BLM) covered by the 1994 multiple agency Memorandum of Understanding (MOU 1994) from the final designation of critical habitat. *F. mexicanum* is not covered by the MSCP; however, other species that co-occur with *F. mexicanum* are covered by the MSCP. Please provide comments on whether the protection and management of the habitat for these co-occurring species are adequate to justify the exclusion of these lands under section 4(b)(2) of the Act. Also, we are seeking any information on the benefits of including or excluding these lands from the critical habitat designation;

(8) The appropriateness of including lands in the Agua Tibia Mountains owned by the USFS and managed under its Land Management Plans for the Four Southern California National Forests from the final designation of critical habitat for *Ceanothus ophiochilus*. Please provide comments on how implementation of the management plan(s) in the Agua Tibia Mountains will or will not provide for conservation for *C. ophiochilus*. Also provide information on any minimization measures or monitoring plans for *C. ophiochilus* that will help insure that the occurrences of *C. ophiochilus* remain healthy and viable in the Cleveland National Forest. Finally,

provide comments on the benefits of including or excluding these lands from the critical habitat designation;

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

(10) Information on the extent to which any State and local environmental protection measures referred to in the draft economic analysis may have been adopted largely as a result of the listing of *Ceanothus ophiochilus* or *Fremontodendron mexicanum*;

(11) Information on whether the draft economic analysis identifies all State and local costs attributable to the proposed critical habitat designation, and information on any costs that have been inadvertently overlooked;

(12) Information on whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(13) Information on whether the draft economic analysis correctly assesses the effect on regional costs associated with any land use controls that may derive from the designation of critical habitat;

(14) Information on areas that could potentially be disproportionately impacted by designation of critical habitat for *Ceanothus ophiochilus* or *Fremontodendron mexicanum*;

(15) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation of critical habitat, and in particular, any impacts on small entities or families; the reasons why our conclusion that the proposed designation of critical habitat will not result in a disproportionate effect to small businesses should or should not warrant further consideration; and other information that would indicate that the designation of critical habitat would or would not have any impacts on small entities or families;

(16) Information on whether the draft economic analysis appropriately identifies all costs that could result from the designation; and

(17) Information on whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

Pursuant to section 4(b)(2) of the Act, an area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of including a particular area as critical habitat, unless the failure to

designate such area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact.

All previous comments and information submitted during the initial comment period from October 3, 2006, to December 4, 2006, for the proposed rule (71 FR 58340) need not be resubmitted, as they are currently part of our record and will be considered in the development of the final rule. If you wish to comment, you may submit your comments and materials concerning the draft economic analysis and the proposed rule by any one of several methods (see **ADDRESSES**). Our final designation of critical habitat will take into consideration all comments and any additional information we have received during both comment periods. On the basis of public comment on this analysis, the critical habitat proposal, and the final economic analysis, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

If submitting comments electronically, please also include "Attn: RIN 1018-AU77" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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.

You may obtain copies of the proposed rule and draft economic analysis by mail from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section) or by visiting our Web site at <http://www.fws.gov/carlsbad/>.

### Background

On August 10, 2004, the Center for Biological Diversity and California Native Plant Society challenged our failure to designate critical habitat for these two species as well as three other plant species (*Center for Biological Diversity et al. v. Gale Norton, Secretary of the Department of the Interior et al.*,

C-04-3240 JL, N. D. Cal.). The Service agreed to withdraw our previous not prudent findings and submit for publication in the **Federal Register** a proposed designation of critical habitat, if prudent, on or before September 20, 2006, and a final critical habitat designation for these plants on or before September 20, 2007. In compliance with the court-approved settlement agreement, we published a proposed rule to designate critical habitat for *Ceanothus ophiochilus* and *Fremontodendron mexicanum* on October 3, 2006 (71 FR 58340). This rule identified a total of 644 acres (ac) (262 hectares (ha)) as critical habitat for these two species. Approximately 283 ac (115 ha) of land in Riverside County, California, were proposed as critical habitat for *C. ophiochilus*, and approximately 361 ac (147 ha) of land in San Diego County, California, were proposed as critical habitat for *F. mexicanum*.

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

### Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. Based on the October 3, 2006, proposed rule to designate critical habitat for *Ceanothus ophiochilus* and *Fremontodendron mexicanum* (71 FR 58340), we have prepared a draft economic analysis of the proposed critical habitat designation.

The current draft economic analysis estimates the foreseeable potential

economic impacts of the proposed critical habitat designation and other conservation-related actions for these species on government agencies and private businesses and individuals. The draft economic analysis identifies potential costs will be \$385,000 to \$659,000 in undiscounted dollars over a 20-year period as a result of the proposed designation of critical habitat, including those costs coextensive with listing and recovery. Discounted future costs are estimated to be \$325,000 to \$559,000 (\$22,000 to \$38,000 annualized) at a 3 percent discount rate, or \$272,000 to \$471,000 (\$26,000 to \$44,000 annualized) at a 7 percent discount rate.

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

This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this draft analysis looks retrospectively at costs that have been incurred since the date *Ceanothus ophiochilus* and *Fremontodendron mexicanum* were listed as endangered and threatened, respectively (October 13, 1998; 63 FR 54956), and considers those costs that may occur in the 20 years following a designation of critical habitat.

As stated earlier, we solicit data and comments from the public on this draft economic analysis, as well as on all aspects of the proposal. We may revise the proposal or its supporting

documents to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

#### Required Determinations—Amended

In our October 3, 2006, proposed rule (71 FR 58340), we indicated that we would be deferring our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders was available in the draft economic analysis. Those data are now available for our use in making these determinations. In this notice we are affirming the information contained in the proposed rule concerning Executive Order (E.O.) 13132; E.O. 12988, the Paperwork Reduction Act; and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). Based on the information made available to us in the draft economic analysis, we are amending our Required Determinations, as provided below, concerning E.O. 12866 and the Regulatory Flexibility Act, E.O. 13211, E.O. 12630, and the Unfunded Mandates Reform Act.

#### Regulatory Planning and Review

In accordance with E.O. 12866, this document is a significant rule because it may raise novel legal and policy issues. Based on our draft economic analysis of the proposed designation of critical habitat for *Ceanothus ophiochilus* and *Fremontodendron mexicanum*, costs related to conservation activities for *C. ophiochilus* and *F. mexicanum* pursuant to sections 4, 7, and 10 of the Act are estimated to be approximately \$385,000 to \$659,000 in undiscounted dollars over a 20-year period as a result of the proposed designation of critical habitat, including those costs coextensive with listing and recovery. Discounted future costs are estimated to be \$325,000 to \$559,000 (\$22,000 to \$38,000 annualized) at a 3 percent discount rate, or \$272,000 to \$471,000, (\$26,000 to \$44,000 annualized) at a 7 percent discount rate. Therefore, based on our draft economic analysis, we have determined that the proposed designation of critical habitat for *C. ophiochilus* and *F. mexicanum* will not result in an annual effect on the economy of \$100 million or more or affect the economy in a material way.

Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule or accompanying economic analysis.

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

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

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

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)) (SBREFA), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based upon our draft economic analysis of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments received, this determination is subject to revision as part of the final rulemaking.

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

To determine if the proposed designation of critical habitat for *Ceanothus ophiochilus* or *Fremontodendron mexicanum* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (such as residential and commercial development). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and thus will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our draft economic analysis of the proposed critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions

related to the listing of *Ceanothus ophiochilus* and *Fremontodendron mexicanum* and proposed designation of its critical habitat.

Impacts of conservation activities are not anticipated to affect small entities in the following categories: Development, fire management on Federal lands, alien plant species management on Federal lands, and other activities on Federal lands. Chapter 2 of the economic analysis concludes that no development is likely in proposed critical habitat. Rural, large lot development may occur in areas adjacent to proposed critical habitat; however, the likelihood of this type of development and whether it will pose a threat to the habitat is unknown. As described in Chapters 3 through 5 of the economic analysis, the modifications to activities on Federal lands, including fire management activities, alien plant species management, and surveying and monitoring activities, will be borne by the USFS and BLM. The Federal government is not considered to be a small entity by the SBA. Accordingly, the small business analysis contained in Appendix A of the economic analysis focuses on the economic impacts of fire management and alien plant species management activities on private lands.

Two private landowners in Riverside County are included in areas proposed as critical habitat. The total economic impact for these two landowners over the next 20 years is estimated to be \$3,000 to \$4,000 per year for fire management activities, and \$1,000 to \$2,000 per year for alien plant species management. Whether these two landowners qualify as a small business is unknown. However, since no more than two potential small businesses are estimated to occur within the area proposed as critical habitat, we certify that this proposed regulation will not result in a significant economic impact on a substantial number of small business entities. Please refer to our draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

#### *Executive Order 13211—Energy Supply, Distribution, and Use*

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed designation of critical habitat for *Ceanothus ophiochilus* and *Fremontodendron mexicanum* is considered a significant regulatory

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

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

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

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

Enforcement.) “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.”

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

(b) We do not believe that this rule will significantly or uniquely affect small governments. As discussed in the draft economic analysis, the majority (75 percent) of the lands proposed as critical habitat are either on Federal lands or on private lands covered by the Western Riverside County MSHCP. The remaining 25 percent is privately-owned land. Consequently, since small governments do not appear to be effected by the proposed critical habitat designation, we do not believe that critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

#### *Executive Order 12630—Takings*

In accordance with E.O. 12630 (“Government Actions and Interference with Constitutionally Protected Private Property Rights”), we have analyzed the potential takings implications of proposing critical habitat for *Ceanothus ophiochilus* and *Fremontodendron mexicanum* in a takings implications assessment. The takings implications assessment concludes that this proposed designation of critical habitat for *C. ophiochilus* and *F. mexicanum* does not pose significant takings implications.

**Author**

The primary authors of this notice are the staff of the Carlsbad Fish and Wildlife Office.

**Authority**

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

Dated: March 26, 2007.

**David M. Verhey,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E7-6186 Filed 4-4-07; 8:45 am]

**BILLING CODE 4310-55-P**

# Notices

Federal Register

Vol. 72, No. 65

Thursday, April 5, 2007

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

## DEPARTMENT OF AGRICULTURE

### Forest Service

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CO-800][1920-PP-4070]

#### Notice of Availability of the Record of Decision (ROD) for the Northern San Juan Basin Coal Bed Methane Development Project Final Environmental Impact Statement, Colorado

**AGENCY:** Bureau of Land Management, Interior. U.S. Forest Service, Agriculture.

**ACTION:** Notice of availability.

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969, the Federal Land Policy and Management Act of 1976, the National Forest Management Act of 1976, and other regulatory requirements, the Joint Lead Agencies announce the availability of the Record of Decision (ROD) for the Northern San Juan Basin Coal Bed Methane Development Project Final Environmental Impact Statement (FEIS) for natural gas development in La Plata and Archuleta Counties, Colorado. The Joint Lead Agencies have issued the ROD to document agency decisions, including selection of FEIS Preferred Alternative 7, with specific modifications and requirements for monitoring and mitigation.

**DATES:** The ROD documents the Bureau of Land Management's (BLM) and the U.S. Forest Service's (USFS) decisions and describes the agencies' appeal processes and timeframes. Official notice of USFS appeal processes and timeframes will be published separately in the newspaper of record, the Durango Herald. Those wishing to appeal USFS decisions should rely on the information presented in that official notice when published.

**ADDRESSES:** Requests for copies of the ROD may be sent by mail to the San Juan Public Lands Center, 15 Burnett Court, Durango, CO 81301, *Attn:* Walt Brown, or by e-mail to: *nsjb-feis@arcadis-us.com*. The ROD is available electronically at *http://www.nsjb-eis.net*, or *http://www.fs.fed.us/r2/sanjuan/projects/projects.shtml*. Hard copies of the ROD are available for review at the San Juan Public Lands Center, 15 Burnett Court, Durango Colorado 81301, the Columbine Ranger District and Field Office, 367 Pearl Street, Bayfield Colorado 81122, and the Pagosa Ranger District and Field Office, 180 Second Street, Pagosa Springs, Colorado 81147. **FOR FURTHER INFORMATION CONTACT:** Walt Brown or Jim Powers at the above address, or *phone:* 970-385-1372.

**SUPPLEMENTARY INFORMATION:** The FEIS analyzes industry's gas field development proposal (approximately 185 new gas wells involving federal authority) and four other alternatives in a 125,000-acre Study Area in the Northern San Juan Basin of Colorado. The Study Area occupies portions of La Plata and Archuleta Counties, and is bounded on the south by the Southern Ute Reservation and on the west, north and east by the arcing line of the base of the Pictured Cliffs sandstone. The Study Area consists of approximately 7,000 acres of BLM administered land, 49,000 acres of U.S. Forest Service administered land, 9,000 acres of private lands with federal minerals and 60,000 acres of state or privately held (fee) lands with non-federal minerals.

The ROD is based on the FEIS and its supporting project record. The ROD documents BLM and USFS project decisions, including selection of FEIS Preferred Alternative 7 (approximately 138 new gas wells involving federal authority), with specific modifications. The ROD also documents requirements for gas field development in the Northern San Juan Basin within the framework of modified Alternative 7, including monitoring, mitigation, and environmental protection measures.

Dated: September 25, 2006.

**Mark W. Stiles,**

*Center Manager/Forest Supervisor, San Juan Public Lands Center, Durango, Colorado.*

**Editorial Note:** This document was received at the Office of the Federal Register on March 30, 2007.

[FR Doc. E7-6291 Filed 4-4-07; 8:45 am]

**BILLING CODE 4310-JB-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Lake Tahoe Basin Federal Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on April 12, 2007 at the U.S. Forest Service Office, 35 College Drive, South Lake Tahoe, CA, 96150. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

**DATES:** The meeting will be held April 12, 2007, beginning at 1 p.m. and ending at 4 p.m.

**ADDRESSES:** The meeting will be held at the U.S. Forest Service Office, 35 College Drive, South Lake Tahoe, CA, 96150.

**FOR FURTHER INFORMATION CONTACT:** Arla Hains, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543-2773.

**SUPPLEMENTARY INFORMATION:** Items to be covered on the agenda include: (1) A public hearing on the Lake Tahoe Federal Advisory Committees' Southern Nevada Public Land Management Act Round 8 project recommendations; and, (2) the Lake Tahoe Federal Advisory Committee Communications Plan. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: March 29, 2007.

**Terri Marceron,**

*Forest Supervisor.*

[FR Doc. 07-1670 Filed 4-4-07; 8:45 am]

**BILLING CODE 3410-11-M**

**COMMISSION ON CIVIL RIGHTS****Agenda and Notice of Public Meeting of the North Carolina Advisory Committee**

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting with briefing of the North Carolina Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Monday, April 23, 2007, at the Sheraton Raleigh Hotel, 421 S. Salisbury St., Raleigh, North Carolina. The purpose of the meeting is to plan future activities and receive briefings on three civil rights topics: (1) Religious freedom for prisoners incarcerated in North Carolina, (2) Title VI compliance by the State of North Carolina, and (3) issues regarding gender equity in the workplace.

Members of the public are entitled to submit written comments; the comments must be received in the Southern Regional Office by May 25, 2007. The address is 61 Forsyth St., SW., Suite 18T40, Atlanta, Georgia 30303. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Peter Minarik, Ph.D., Regional Director, Southern Regional Office, U.S. Commission on Civil Rights at (404) 562-7000 [TDD 202-376-8116], or by e-mail at [pminarik@usccr.gov](mailto:pminarik@usccr.gov).

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Southern 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 Southern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, April 2, 2007.

**Ivy Davis,**

*Acting Chief, Regional Programs  
Coordination Unit.*

[FR Doc. E7-6396 Filed 4-4-07; 8:45 am]

**BILLING CODE 6335-02-P**

**COMMISSION ON CIVIL RIGHTS****Sunshine Act Notice**

**DATE AND TIME:** Friday, April 13, 2007, 9:30 a.m.

**PLACE:** U.S. Commission on Civil Rights, 624 Ninth Street, NW., Rm. 540, Washington, DC 20425.

**Meeting Agenda**

- I. Approval of Agenda
- II. Approval of Minutes of March 9, Meeting
- III. Announcements
- IV. Staff Director's Report
- V. Management and Operations
  - Anti-Semitism Public Education Campaign Web Pages
  - 2007 Calendar
  - Web site Updates
  - Procedures for Briefing Reports
  - Strategic Planning
- VI. Program Planning
  - Affirmative Action in Law Schools Briefing Report
- VII. State Advisory Committee Issues
  - Virginia SAC
  - Michigan AC
- VIII. Future Agenda Items
- IX. Adjourn

**CONTACT PERSON FOR FURTHER**

**INFORMATION:** Christopher Byrnes, Office of the Staff Director, (202) 376-7700.

**David Blackwood,**

*General Counsel.*

[FR Doc. 07-1720 Filed 4-3-05; 3:36 pm]

**BILLING CODE 6335-0P-P**

**DEPARTMENT OF COMMERCE****Foreign-Trade Zones Board**

**[Docket 12-2007]**

**Foreign-Trade Zone 22 – Chicago, IL, Application for Subzone Status, Medline Industries, Inc., (Medical Supply Distribution and Processing)**

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Illinois International Port District, grantee of FTZ 22, requesting special-purpose subzone status for the medical supply distribution and processing (kitting) facilities of Medline Industries, Inc. (Medline), located in Mundelein, Waukegan, and Libertyville, Illinois. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 28, 2007.

The proposed subzone would include Medline's facilities at four sites in Lake County, Illinois: *Site 1* (one building/

8.59 acres/203,500 sq.ft.) – 1170 Northpoint Boulevard in Waukegan, Illinois, about 25 miles north of Chicago; *Site 2* (one building/9.11 acres/145,898 sq.ft.) – 1710 Lakeside Lane, Waukegan, located one mile south of Site 1; *Site 3* (three buildings/43.14 acres/502,876 sq.ft.) – 1200 Townline Road, Mundelein, some six miles southwest of Site 1; and, *Site 4* (one building/35 acres/600,000 sq.ft.) – 1501 Harris Road, Libertyville, about two miles north of Site 3. The facilities are used for warehousing and distribution and processing (kitting) of foreign-origin and domestic medical supplies and equipment for the U.S. market and export. FTZ procedures would be utilized to support Medline's Illinois-based distribution activity that competes with facilities located abroad.

Finished medical supplies and equipment to be admitted to the proposed subzone for distribution would include: apparel items of cotton and man-made fibers (gowns, shirts, overalls, caps, baby shirts, scrubs, covers, socks, pajamas, slippers), woven/non-woven bed linens, towels, pillows, diapers, aprons, canes, walkers, wheelchairs, scooters, grab bars, beds, commodes, wooden bedroom furniture, folios, leather and man-made fiber travel bags, thermometers, vacuum pumps, medicaments, gauze, insecticides, fungicides, disinfectants, diagnostic reagents, plastic sheet/strip/foil/film, articles of plastic, paper products, tableware, glassware, belts, garment hangers, clippers, razors, lab equipment, batteries, portable lamps, alarms, medical/surgical/diagnostic equipment and appliances, exercise/therapy equipment, brooms/brushes/mops, writing instruments, artworks, watches and clocks, watch cases, and toiletry items. The application states that all foreign textile and apparel products classified within textile import categories that are subject to quota would be admitted to the proposed subzone under domestic (duty-paid) status (19 CFR § 146.43) or privileged foreign status (19 CFR § 146.41).

Medline also plans to conduct certain kitting operations under FTZ procedures. The company is requesting authority to assemble surgical procedure tray kits (duty free). Imported components that could be included in a kit include: articles of plastic (trays, basins, medcups and lids, dishes, specimen containers), suction hose, holsters, rubber gloves, cleaning wipes, paper bags, medical/surgical appliances and/or instruments, gauze items, paper sheets/drapes/garments, syringes, woven/non-woven fabrics, surgical towels, disposable headgear and apparel

(duty rate range: free – 17.6%). The application indicates that Medline will admit all foreign-origin items classified within textile import quota categories to the proposed subzone under domestic (duty-paid) status or in privileged foreign status when used in the kitting activity.

FTZ procedures would exempt Medline from customs duty payments on foreign products that are re-exported. On domestic sales, duty payments would be deferred until the foreign merchandise is shipped from the facilities and entered for U.S. consumption. For its processing activity, Medline would be able to elect the duty rate that applies to finished surgical procedure tray kits (free) for the foreign-sourced inputs noted above. Medline would also realize significant logistical benefits through the use of weekly entry procedures. The application indicates that all of the savings from FTZ procedures would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 4, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 19, 2007.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: U.S. Department of Commerce Export Assistance Center, Suite 212, 28055 Ashley Circle, Libertyville, Illinois 60048; and, Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2814B, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230-0002. For further information, contact Pierre Duy at [pierre\\_duy@ita.doc.gov](mailto:pierre_duy@ita.doc.gov), or (202) 482-1378.

Dated: March 28, 2007.

**Andrew McGilvray,**  
*Executive Secretary.*

[FR Doc. E7-6407 Filed 4-4-07; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Docket 4-2007]

#### Foreign-Trade Zone 121 – Albany, New York, Application for Subzone, MPM Silicones, LLC, Notice of Public Hearing and Extension of Comment Period

Pursuant to a timely request from a directly affected party showing good cause (15 CFR § 400.51(b)), a public hearing will be held on the application for subzone status at the MPM Silicones, LLC, facility in Waterford, New York, submitted by the Capital District Regional Planning Commission, grantee of Foreign-Trade Zone 121 (72 FR 6518, 2/12/07). The public hearing will take place on April 18, 2007 at 2:00 pm, at the U.S. Department of Commerce, Room 4830, 1401 Constitution Ave., NW, Washington, DC. Interested parties should indicate their intent to participate in the hearing and provide a summary of their remarks no later than April 16, 2007 (see submission address below).

Pursuant to 15 CFR § 400.27(c)(2), the comment period for this case is being extended to May 3, 2007. Rebuttal comments may be submitted during the subsequent 15-day period, until May 18, 2007. Submissions (original and 3 copies) shall be addressed to the Foreign-Trade Zones Board's Executive Secretary at: Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2814B, 1401 Constitution Ave., NW, Washington, DC 20230.

For further information, contact Elizabeth Whiteman at [Elizabeth\\_Whiteman@ita.doc.gov](mailto:Elizabeth_Whiteman@ita.doc.gov) or (202) 482-0473.

Dated: March 30, 2007.

**Andrew McGilvray,**  
*Executive Secretary.*

[FR Doc. E7-6408 Filed 4-4-07; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A-427-801, A-428-801, A-475-801, A-588-804, A-559-801, A-412-801**

#### Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Reviews

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

**EFFECTIVE DATE:** April 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** Yang Jin Chun or Richard Rimlinger, AD/CVD Operations Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5760 and (202) 482-4477, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

At the request of interested parties, the Department of Commerce (the Department) initiated administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom for the period May 1, 2005, through April 30, 2006. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 37892 (July 3, 2006). On January 18, 2007, we extended the due date for the completion of the preliminary results of reviews by 45 days. See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Reviews*, 72 FR 2261 (January 18, 2007). On March 23, 2007, we extended the due date for the completion of the preliminary results of reviews by 16 additional days. See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Reviews*, 72 FR 13743 (March 23, 2007). The preliminary results of the reviews are currently due no later than April 2, 2007.

#### Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Reviews

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of

these reviews within the current time limit because of the number of respondents in these reviews and the complexity of the issues under analysis such as further-manufacturing operations in the United States, the "collapsing" of companies, and the use of constructed value for reseller respondents for which we need to issue additional questionnaires. Therefore, we are extending the time period for issuing the preliminary results of these reviews by 59 additional days until May 31, 2007.

This notice is published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: March 30, 2007.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E7-6384 Filed 4-4-07; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-866]

#### **Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order**

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

**SUMMARY:** On December 1, 2006, the Department of Commerce ("Department") initiated a sunset review of the antidumping duty order on folding gift boxes from the People's Republic of China ("PRC"), pursuant to section 751(c) of the Tariff Act of 1930, as amended ("Act"). See *Initiation of Five-year ("Sunset") Reviews*, 71 FR 69545 (December 1, 2006) ("Sunset Initiation"); see also *Notice of Antidumping Duty Order: Certain Folding Gift Boxes From the People's Republic of China*, 67 FR 864 (January 8, 2002) ("Order"). Based on the notice of intent to participate and response filed by the domestic interested party, and the lack of response from respondent interested parties, the Department conducted an expedited sunset review of the Order pursuant to section 751(c)(3)(B) of the Act and 19 C.F.R. 351.218(e)(1)(ii)(C)(2). As a result of this sunset review, the Department finds that revocation of the Order would likely lead to continuation or recurrence of dumping at the levels indicated in the "Final Results of Review" section of this notice.

**EFFECTIVE DATE:** April 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** Juanita H. Chen or Robert A. Bolling; AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: 202-482-1904 and 202-482-3434, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On December 1, 2006, the Department initiated a sunset review of the Order on folding gift boxes from the PRC pursuant to section 751(c) of the Act. See *Sunset Initiation*. On December 15, 2006, the Department timely received a notice of intent to participate from Simkins Industries, Inc. ("Simkins"), pursuant to 19 C.F.R. 351.218(d)(1)(i). Simkins claimed interested party status under section 771(9)(C) of the Act as a domestic producer of subject merchandise. On January 3, 2007, the Department received a request from Harvard Folding Box Company, Inc. ("Harvard Box"), asking to be substituted for Simkins as the domestic interested party in the sunset review. Both Simkins and Harvard Box are represented by the same counsel. Harvard Box also filed a substantive response within the 30-day deadline as specified in 19 C.F.R. 351.218(d)(3)(i). The Department did not receive any objections to Harvard Box's request to be substituted for Simkins. The Department did not receive a substantive response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 C.F.R. 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of the Order.

##### **Scope Of The Order**

The products covered by the order are certain folding gift boxes. Folding gift boxes are a type of folding or knock-down carton manufactured from paper or paperboard. Folding gift boxes are produced from a variety of recycled and virgin paper or paperboard materials, including, but not limited to, clay-coated paper or paperboard and kraft (bleached or unbleached) paper or paperboard. The scope of the order excludes gift boxes manufactured from paper or paperboard of a thickness of more than 0.8 millimeters, corrugated paperboard, or paper mache. The scope of the order also excludes those gift boxes for which no side of the box, when assembled, is at least nine inches in length.

Folding gift boxes included in the scope of the order are typically

decorated with a holiday motif using various processes, including printing, embossing, debossing, and foil stamping, but may also be plain white or printed with a single color. The subject merchandise includes folding gift boxes, with or without handles, whether finished or unfinished, and whether in one-piece or multi-piece configuration. One-piece gift boxes are die-cut or otherwise formed so that the top, bottom, and sides form a single, contiguous unit. Two-piece gift boxes are those with a folded bottom and a folded top as separate pieces. Folding gift boxes are generally packaged in shrink-wrap, cellophane, or other packaging materials, in single or multi-box packs for sale to the retail customer. The scope of the order excludes folding gift boxes that have a retailer's name, logo, trademark or similar company information printed prominently on the box's top exterior (such folding gift boxes are often known as "not-for-resale" gift boxes or "give-away" gift boxes and may be provided by department and specialty stores at no charge to their retail customers). The scope of the order also excludes folding gift boxes where both the outside of the box is a single color and the box is not packaged in shrink-wrap, cellophane, other resin-based packaging films, or paperboard.

Imports of the subject merchandise are classified under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 4819.20.0040 and 4819.50.4060. These subheadings also cover products that are outside the scope of the order. Furthermore, although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

##### **Analysis Of Comments Received**

A complete discussion of all issues raised in this review are addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. See "Issues and Decision Memorandum for the Final Results in the Expedited Sunset Review of the Antidumping Duty Order on Folding Gift Boxes from the People's Republic of China," from Stephen J. Claeys, Deputy Assistant Secretary, to David M. Spooner, Assistant Secretary for Import Administration, dated March 29, 2007 ("I&D Memo"). The issues discussed in the accompanying I&D Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margin likely to prevail if the Order were revoked. Parties can obtain a public copy of the I&D Memo on file in the Central Records

Unit, room B-099, of the main Commerce building. In addition, a complete public version of the I&D Memo can be accessed directly on the Web at <http://ia.ita.doc.gov> and clicking on "Federal Register Notices." The paper copy and electronic version of the I&D Memo are identical in content.

#### Final Results Of Sunset Review

The Department determines that revocation of the Order on folding gift boxes from the PRC would likely lead to continuation or recurrence of dumping at the rates listed below:

Manufacturers/Exporters/Producers	Weighted-Average Margin (Percent)
Red Point Paper Products Co., Ltd. ....	8.90 %
Max Fortune Industrial Ltd. ....	1.67 % ( <i>de minimis</i> )
PRC-wide rate .....	164.75 %

#### Notification Regarding Administrative Protective Order

This notice also serves as the only 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 C.F.R. 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: March 29, 2007.

**David M. Spooner,**  
Assistant Secretary for Import Administration.

[FR Doc. E7-6404 Filed 4-4-07; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-549-821]

#### Notice of Extension of Deadline for the Preliminary Results of Antidumping Duty Administrative Review: Polyethylene Retail Carrier Bags from Thailand

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

**EFFECTIVE DATE:** April 5, 2007.

#### FOR FURTHER INFORMATION CONTACT:

Kristin Case or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3174 and (202) 482-4477, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Extension of Deadline

At the request of various parties, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on polyethylene retail carrier bags from Thailand for the period August 1, 2005, through July 31, 2006. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 57465 (September 29, 2006). Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue preliminary results of review within 245 days after the last day of the anniversary month of an order for which a review is requested and final results within 120 days after the date on which the preliminary results were published. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of this review within the current time limit because of the number of respondents in this review and the complexity of the issues under analysis. Further, we received below-cost allegations and are currently conducting below-cost investigations for several of the respondents. Accordingly, because we need to analyze and incorporate the information from recently filed submissions, we are extending the deadline for issuing the preliminary results of this review by 60 days until July 2, 2007.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: March 30, 2007.

**Stephen J. Claeys,**  
Deputy Assistant Secretary for Import Administration.

[FR Doc. E7-6406 Filed 4-4-07; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A- 570-847]

#### Polyvinyl Alcohol from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review

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

**EFFECTIVE DATE:** April 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** Lilit Astvatsatrian, AD/CVD Operations, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-6412.

#### SUPPLEMENTARY INFORMATION:

##### Background

On October 2, 2006, the Department of Commerce ("the Department") published a notice of opportunity to request an administrative review of the antidumping duty order on polyvinyl alcohol ("PVA") from the People's Republic of China ("PRC"). See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 71 FR 57920 (October 2, 2006). On October 23, 2006, Sinopec Sichuan Vinylon Works ("SVW") requested that the Department conduct an administrative review of SVW. The Department published a notice of initiation of the antidumping duty administrative review of PVA from the PRC for the period October 1, 2005, through September 30, 2006. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 68535 (November 27, 2006).

##### Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. On January 18, 2007, SVW withdrew its request for an administrative review within 90 days of the publication of the notice of initiation of this review. Therefore, in accordance with 19 CFR 351.213(d)(1), and consistent with its practice, the Department hereby rescinds the administrative review of Polyvinyl Alcohol from the People's Republic of China for the period October 1, 2005,

through September 30, 2006. The Department intends to issue assessment instructions to U.S. Customs and Border Protection 15 days after the publication of this notice of rescission of administrative review.

This notice is in accordance with section 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: March 23, 2007.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E7-6405 Filed 4-4-07; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-405-803, A-401-808, A-421-811, A-201-834)

#### **Purified Carboxymethylcellulose from Finland, Sweden, the Netherlands, and Mexico: Extension of Time Limits for Preliminary Determinations of Antidumping Duty Administrative Reviews**

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

**EFFECTIVE DATE:** April 5, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Tyler Weinhold, Robert James (Mexico and Finland), or Angelica Mendoza (Sweden and the Netherlands), AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-1121, (202) 482-0649, and (202) 482-3019, respectively.

**SUPPLEMENTARY INFORMATION:**

#### **Background**

On August 30, 2006, the Department published a notice of initiation of an antidumping duty administrative review for, *inter alia*, Purified Carboxymethylcellulose from Finland, Sweden, the Netherlands, and Mexico for the December 27, 2004, through June 30, 2006, period of review (POR). See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (August 30, 2006). On December 11, 2006, the Department received requests from Aqualon Company, a division of Hercules, Inc. (Petitioner) that a cost investigation be initiated in the review of CMC from Finland, Sweden, and the Netherlands. See Letters from Petitioner dated December 8, 2006. On January 22, 2007,

the Department initiated a sales below cost of production investigation in the instant review of CMC from the Netherlands. See January 22, 2007, memorandum to Richard Weible, regarding Petitioner's allegation of sales below the cost of production in the review of CMC from the Netherlands. On January 24, 2007, the Department initiated a sales below cost of production investigation in the instant review of CMC from Sweden. See January 24, 2007, memorandum to Richard Weible, regarding Petitioner's allegation of sales below the cost of production in the review of CMC from Sweden. On February 5, 2007, the Department initiated a sales below cost of production investigation in the instant review of CMC from Finland. See February 5, 2007, memorandum to Richard Weible, regarding Petitioner's allegation of sales below the cost of production in the review of CMC from Finland. The preliminary results for these administrative reviews are currently due no later than April 2, 2007.

#### **Extension of Time Limits for Preliminary Results**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245 day time period for the preliminary results to 365 days.

The Department has determined it is not practicable to complete these reviews within the statutory time limit because we require additional time to conduct sales below-cost investigations in these administrative reviews and to collect and analyze other information needed for our preliminary determinations. Accordingly, the Department is extending the time limits for completion of the preliminary results of these administrative reviews until no later than July 31, 2007, which is 365 days from the last day of the anniversary month of these orders. We intend to issue the final results in these reviews no later than 120 days after publication of the preliminary results notices.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: March 30, 2007.

**Stephen Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E7-6381 Filed 4-4-07; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

A-449-804

#### **Steel Concrete Reinforcing Bars from Latvia; Final Results of the Sunset Review of Antidumping Duty Order**

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

**SUMMARY:** On November 27, 2006, the Department ("the Department") published a notice of preliminary results of the full sunset review of the antidumping duty order on steel concrete reinforcing bars ("rebar") from Latvia pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to the continuation or recurrence of dumping.

**EFFECTIVE DATE:** April 5, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Audrey R. Twyman or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: 202-482-3534 and 202-482-0182, respectively.

**SUPPLEMENTARY INFORMATION:**

#### **Background**

On November 27, 2006, the Department published a notice of preliminary results of the full sunset review of the antidumping duty order on rebar from Latvia pursuant to section 751(c) of the Act. See *Steel Concrete Reinforcing Bars from Latvia; Preliminary Results of the Sunset Review of Antidumping Duty Order*, 71 FR 68544 (November 27, 2006) ("*Preliminary Results*"). We provided interested parties an opportunity to comment on our preliminary results. The Department received a case brief from Joint Stock Company Liepajas Metalurgs on January 16, 2007, and a rebuttal brief from the Rebar Trade Action Coalition and its individual producer members Nucor Corporation, CMC Steel Group, and Gerdau Ameristeel, as well as TAMCO Steel, and Cascade Steel Rolling Mills, Inc. on

January 22, 2007. A hearing was not held because none was requested.

**Scope of the Order**

The product covered by this order is all steel concrete reinforcing bars sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers 7214.20.00, 7228.30.8050, 7222.11.0050, 7222.30.0000, 7228.60.6000, 7228.20.1000, or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating.

HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.

**Analysis of Comments Received**

All issues raised in this sunset review are addressed in the “Issues and Decision Memorandum for the Sunset Review of the Antidumping Duty Order on Steel Concrete Reinforcing Bars from Latvia; Final Results,” to David M. Spooner, Assistant Secretary for Import Administration, dated March 29, 2007 (“Decision Memo”), which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the antidumping duty order were revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memorandum, which is on file in room B-099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the Decision Memo are identical in content.

**Final Results of Review**

The Department determines that revocation of the antidumping duty order on rebar from Latvia is likely to lead to a continuation or recurrence of dumping at the following weighted-average margins:

Manufacturers/Producers/Exporters	Weighted-Average Margin (Percentage)
Joint Stock Company Liepajas Metalurgs	17.21
All Others .....	17.21

This notice serves as a final reminder to parties subject to administrative protective order (“APO”) of their responsibility concerning the

disposition of proprietary material disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This sunset review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 29, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E7-6398 Filed 4-4-07; 8:45 am]

**BILLING CODE 3510-DS-S**

**DEPARTMENT OF COMMERCE**

**International Trade Administration  
(C-357-813)**

**Honey from Argentina: Notice of Rescission of Countervailing Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**EFFECTIVE DATE:** April 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** Elfi Blum, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-0197.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 1, 2006, the Department of Commerce (“the Department”) published a notice of opportunity to request an administrative review of the countervailing duty order on Honey from Argentina. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 69543 (December 1, 2006). On December 29, 2006, the American Honey Producers Association and the Sioux Honey Association (petitioners) timely requested that the Department conduct an administrative review of the countervailing duty order on honey from Argentina for the period January 1, 2006 through December 31, 2006. Shortly thereafter, the Department published a notice of the initiation of the countervailing duty administrative review of honey from Argentina for the period January 1, 2006 through December 21, 2006. *See Initiation of Antidumping and Countervailing Duty*

*Administrative Reviews*, 72 FR 5005 (February 2, 2007). On March 9, 2007, petitioners withdrew their request for this administrative review of the countervailing duty order of honey from Argentina. No other party requested an administrative review of this countervailing duty order.

**Rescission of Review**

The Department’s regulations at section 351.213(d)(1) provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws its request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. Petitioners, the only requestors of this review, submitted their request for withdrawal in a timely manner. Therefore, the Department is rescinding the administrative review of the countervailing duty order on honey from Argentina for the period January 1, 2006 through December 31, 2006. The Department intends to issue assessment instructions to U.S. Customs and Border Protection within 15 days of publication of this notice.

**Notification Regarding APOs**

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department’s regulations, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and section 351.213(d)(4) of the Department’s regulations.

Dated: March 30, 2007.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E7-6385 Filed 4-4-07; 8:45 am]

**BILLING CODE 3510-DS-S**

**DEPARTMENT OF COMMERCE****International Trade Administration**

C-533-825

**Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**EFFECTIVE DATE:** April 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** Toni Page, Elfi Blum-Page, or Nicholas Czajkowski, Office of AD/CVD Operations 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-1398, (202) 482-0197 or (202) 482-1395, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On August 30, 2006, in response to timely requests from MTZ Polyfilms, Ltd., Jindal Poly Films Limited of India, and Garware Polyester, Ltd., the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on polyethylene terephthalate (PET) film, sheet, and strip from India. See *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (August 30, 2006). This administrative review covers the period January 1, 2005 through December 31, 2005.

**Extension of Time Limits for Preliminary Results**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) and section 351.213(h)(1) of the Department's regulations require the Department to issue the preliminary results of a review within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and final results of the review within 120 days after the date on which the notice of the preliminary results is published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within the aforementioned specified time limits, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the 245-day

period to 365 days and to extend the 120-day period to 180 days.

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Due to the large number of programs under review, the Department needs additional time to analyze the questionnaire responses and issue appropriate supplemental questionnaires. Therefore, the Department is extending the deadline for completion of the preliminary results of this administrative review of the countervailing duty order on PET film from India by 120 days from April 2, 2007 until no later than July 31, 2007.

This notice is issued and published pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: March 30, 2007.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E7-6382 Filed 4-4-07; 8:45 am]

**BILLING CODE 3510-DS-S**

and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, (301) 563-7118.

Federal Domestic Assistance Catalog: 11.419.

Coastal Zone Management Program Administration.

Dated: March 30, 2007.

**David M. Kennedy,**

*Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. E7-6355 Filed 4-4-07; 8:45 am]

**BILLING CODE 3510-08-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****Availability of Seats for the Olympic Coast National Marine Sanctuary Advisory Council**

**AGENCY:** National Marine Sanctuary Program (NMSA), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

**ACTION:** Notice and request for applications.

**SUMMARY:** The Olympic Coast National Marine Sanctuary (OCNMS or sanctuary) is seeking applicants for the following vacant seat on its Sanctuary Advisory Council (council): Citizen-at-large alternate. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. The applicant who is chosen should expect to serve out the remainder of the term, pursuant to the council's Charter.

**DATES:** Applications are due by May 31, 2007.

**ADDRESSES:** Applications kits may be obtained from Andrew Palmer, Olympic Coast National Marine Sanctuary, 115 East Railroad Ave., Suite 301, Port Angeles, WA 98362. Completed applications should be sent to the same address.

**FOR FURTHER INFORMATION CONTACT:** Andrew Palmer, Olympic Coast National Marine Sanctuary, 115 East Railroad Ave., Suite 301, Port Angeles, WA 98362 Andrew Palmer, Olympic Coast National Marine Sanctuary, 115

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****Evaluation of State Coastal Management Programs and National Estuarine Research Reserves**

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, National Ocean Service, Commerce.

**ACTION:** Notice of postponement of scheduled program evaluation.

**SUMMARY:** The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces the postponement of the previously scheduled Coastal Zone Management Act program evaluation of the U.S. Virgin Islands Coastal Management Program.

**DATE AND TIME POSTPONEMENT:** Notice was previously given in the **Federal Register** on February 27, 2007, that the Virgin Islands Coastal Management Program evaluation site visit was scheduled for June 25-29, 2007. Three public meetings were scheduled during the week. The evaluation site visit has been postponed to a date yet to be determined. The public meetings will also be rescheduled after the site visit is rescheduled. Notice will be given in the **Federal Register** when the site visit and public meeting dates have been established.

**FOR FURTHER INFORMATION CONTACT:** Ralph Cantral, Chief, National Policy

East Railroad Ave., Suite 301, Port Angeles, WA 98362, Phone (350) 457-6622, ext. 15, e-mail [andrew.palmer@noaa.gov](mailto:andrew.palmer@noaa.gov).

**SUPPLEMENTARY INFORMATION:** Sanctuary Advisory Council members and alternates serve three-year terms. The Advisory Council meets bi-monthly in public sessions in communities in and around the Olympic Coast National Marine Sanctuary.

The Olympic Coast National Marine Sanctuary Advisory Council was established in December 1998 to assure continued public participation in the management of the sanctuary. Serving in a volunteer capacity, the advisory council's 15 voting members represent a variety of local user groups, as well as the general public. In addition, five Federal Government agencies and one federally funded program serve as non-voting, ex officio members. Since its establishment, the advisory council has played a vital role in advising the sanctuary and NOAA on critical issues. In addition to providing advice on management issues facing the Sanctuary, the Council members serve as a communication bridge between constituents and the Sanctuary staff.

**Authority:** 16 U.S.C. Sections 1431. *et. seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: March 29, 2007.

**Daniel J. Basta,**

*Director, National Marine Sanctuary Program, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 07-1678 Filed 4-4-07; 8:45 am]

**BILLING CODE 3510-NK-M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 032907B]

#### Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold a meeting of its Limited Access Privilege (LAP) Program Exploratory Workgroup, in Charleston, SC.

**DATES:** The meeting will take place April 24-26, 2007. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meeting will be held at the Hampton Inn, 678 Citadel Haven Drive, Charleston, SC 29414; telephone: (800) 426-7866 or (843) 571-1200; fax: (843) 853-2186.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571-4366 or toll free (866) SAFMC-10; fax: (843) 769-4520; email: [kim.iverson@safmc.net](mailto:kim.iverson@safmc.net).

**SUPPLEMENTARY INFORMATION:** Members of the LAP Program Exploratory Workgroup will meet from 1 p.m.—5 p.m. on April 24, 2007, from 8:30 a.m.—5 p.m. on April 25, 2007, and from 8:30 a.m.—3 p.m. on April 26, 2007. The meeting is being convened to address issues relevant to the Council's consideration of implementing a LAP Program for the commercial snapper grouper fishery in the South Atlantic region.

Items for discussion by the Workgroup include: (1) Presentation regarding the background of the formation of the Workgroup and its role; (2) Presentations on the experiences of other LAP Programs and their success and drawbacks; (3) An overview of the Magnuson Stevens Fishery Conservation and Management Reauthorization Act and implications for LAP Programs; and (4) Review and provide recommendations regarding LAP program goals and objectives for the snapper grouper fishery in the South Atlantic and a draft action plan.

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meetings.

Note: The times and sequence specified in this agenda are subject to change.

Dated: April 2, 2007.

**Tracey L. Thompson,**

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

[FR Doc. E7-6356 Filed 4-4-07; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Defense Business Board; Notice of Advisory Committee Meeting

**AGENCY:** Department of Defense, DoD.

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Defense Business Board (DBB) will meet in open session on Thursday, April 26th at the Pentagon, Washington, DC, from 8:05 a.m. to 8:50 a.m. The mission of the DBB is to advise the Secretary of Defense on effective strategies for implementation of best business practices of interest to the Department of Defense. At this meeting, the Board will deliberate on findings from three task groups: Task Group on Review of Prior DBB Supply Chain Reports, Task Group on Tooth-to-Tail Analysis, and Task Group on Developing a Framework for Analyzing Executive Level Compensation. Copies of DRAFT Task Group presentations will be made available on April 18th by contacting the DBB Office. Members of the public who wish to provide input to the board should submit written comments by 5 p.m., Monday, April 23rd to allow time for distribution to the Board members prior to the meeting. Additionally, those who wish to attend the meeting must contact the Defense Business Board no later than Noon on Monday, April 23rd, for further information about escort arrangements in the Pentagon.

**DATES:** Thursday, April 26th, 8:05 a.m. to 8:50 a.m.

**ADDRESSES:** 1155 Defense Pentagon, Room 3C288, Washington, DC 20301-1155.

**FOR FURTHER INFORMATION CONTACT:** Defense Business Board, 1155 Defense Pentagon, Room 3C288, Washington, DC 20301-1155, via e-mail at [defensebusinessboard2@osd.mil](mailto:defensebusinessboard2@osd.mil) or via phone at (703) 697-2168.

Dated: March 30, 2007.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, DoD.*

[FR Doc. 07-1672 Filed 4-4-07; 8:45am]

**BILLING CODE 5001-06-M**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before May 7, 2007.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs,

Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or via fax to (202) 395-6974. Commenters should include the following subject line in their response "Comment: [insert OMB number], [insert abbreviated collection name, e.g., "Upward Bound Evaluation"]". Persons submitting comments electronically should not submit paper copies.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 30, 2007.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

### Office of Safe and Drug Free Schools

*Type of Review:* New.

*Title:* Student Drug-Testing Grantee Survey.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 84.

*Burden Hours:* 1,700.

*Abstract:* This program will provide information about implementation

progress by school-based student drug-testing program grantees. The Administration has identified it as a priority and requested significant budget funding increases. In light of this anticipated growth, the Office of National Drug Control Policy needs more in-depth information about these grant's performance than currently provided to assess the grant programs and to provide Congress with relevant program implementation data.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3006. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E7-6317 Filed 4-4-07; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[IC07-2-001, FERC FORM 2]

#### Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

March 30, 2007.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of this information collection requirement. Any interested person may file comments

directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received comments from one entity in response to an earlier **Federal Register** notice of January 8, 2007 (72 FR 764-765) and has provided a response to the commenter in its submission to OMB. Copies of the submission were also submitted to the commenter.

**DATES:** Comments on the collection of information are due by April May 4, 2007.

**ADDRESSES:** Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, [c/o oira\\_submission@omb.eop.gov](mailto:c/oir_submission@omb.eop.gov) and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202-395-4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED-34, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings an original and 14 copies, of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC07-2-001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at <http://www.ferc.gov> and click on "Make an E-Filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202-502-8258 or by e-mail to [efiling@ferc.gov](mailto:efiling@ferc.gov). Comments should not be submitted to this e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For user assistance, contact [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-

free at (866) 208-3676, or for TTY, contact (202) 502-8659.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 502-8415, by fax at (202) 273-0873, and by e-mail at [michael.miller@ferc.gov](mailto:michael.miller@ferc.gov).

**SUPPLEMENTARY INFORMATION:**

**Description**

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC Form 2 "Annual Report for Major Natural Gas Companies".

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902-0028.

The Commission is now requesting that OMB approve and extend the expiration date for an additional three years with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary for the Commission to carry out its responsibilities in implementing the statutory provisions of the Natural Gas Act (NGA) 15 U.S.C. 717. The FERC Form 2 is a financial and operating report for natural gas rate regulation for major pipeline owners. "Major" is defined as companies having combined gas sold for resale and gas transported or stored for a fee that exceeds 50 million Dth in each of the three previous calendar years. Under the Form 2, the Commission investigates, collects and records data and prescribes rules and regulations concerning accounts, records and memoranda as necessary to administer the NGA. The Commission is empowered to prescribe a system of accounts for jurisdictional gas pipelines and after notice and opportunity for hearing, may determine the accounts in which particular outlays the receipts will be entered, charged or credited.

The Commission's staff uses the data in the continuous review of the financial condition of jurisdictional companies, in various rate proceedings and in the Commission's audit program. FERC Form 2 data are also used to compute annual charges which are necessary to recover the Commission's annual costs. The annual charges are required by section 3401 of the Omnibus Budget Reconciliation Act of 1986.

The NGA mandates the collection of information needed by the Commission to perform its regulatory responsibilities in the setting of just and reasonable rates. The Commission could be held in

violation of the NGA if the information was not collected.

The annual financial information filed with the Commission is a mandatory requirement submitted in a prescribed format which is filed electronically. The Commission implements these filing requirements in 18 CFR parts 158, 201, 260.1 and 385.2011.

5. *Respondent Description:* The respondent universe currently comprises 71 companies (on average) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 111,470 total hours, 71 respondents (average), 1 response per respondent, and 1,570 hours per response (average).

7. *Estimated Cost Burden to respondents:* 111,470 hours/2080 hours per years × \$122,137 per year = \$6,545,486. The cost per respondent is equal to \$92,190.

**Statutory Authority:** Statutory provisions of sections 205(a) and (e) of the Federal Power Act, 16 U.S.C. 824d.

**Philis J. Posey,**  
*Acting Secretary.*

[FR Doc. E7-6319 Filed 4-4-07; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**[IC07-2A-001, FERC FORM 2A]**

**Commission Information Collection Activities, Proposed Collection; Comment Request; Extension**

March 30, 2007.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received one comment from an entity in response to an earlier **Federal Register** notice of January 8, 2007 (72 FR 763-764) and has provided a response to the commenter in its submission to OMB. Copies of the submission were also submitted to the commenter.

**DATES:** Comments on the collection of information are due by May 4, 2007.

**ADDRESSES:** Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o [omb\\_submission@omb.eop.gov](mailto:omb_submission@omb.eop.gov) and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202-395-4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED-34, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings an original and 14 copies, of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC07-2A-001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at <http://www.ferc.gov> and click on "Make an E-Filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202-502-8258 or by e-mail to [efiling@ferc.gov](mailto:efiling@ferc.gov). Comments should not be submitted to this e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For user assistance, contact [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202)502-8415, by fax at (202)273-0873, and by e-mail at [michael.miller@ferc.gov](mailto:michael.miller@ferc.gov).

**SUPPLEMENTARY INFORMATION:**

**Description**

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC Form 2A "Annual Report of Nonmajor Natural Gas Companies"

2. *Sponsor:* Federal Energy Regulatory Commission

3. *Control No.:* 1902-0030

The Commission is now requesting that OMB approve and extend the expiration date for an additional three years with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary for the Commission to carry out its responsibilities in implementing the statutory provisions of the Natural Gas Act (NGA) 15 U.S.C. 717. The FERC Form 2-A is a financial and operating report for natural gas rate regulation for nonmajor pipeline owners. A "nonmajor" pipeline owner is one that has combined gas sales for resale and has gas transported or stored for a fee that exceeds 200,000 Dth but which is less than 50 million Dth, in each of the three previous calendar years. Under the Form 2-A, the Commission investigates, collects and records data, and prescribes rules and regulations concerning accounts, records and memoranda as necessary to administer the NGA. The Commission is empowered to prescribe a system of accounts for jurisdictional gas pipelines and after notice and opportunity for hearing, may determine the accounts in which particular outlays and receipts will be entered, charged or credited.

FERC staff uses the data in the continuous review of the financial condition of jurisdictional companies, in various rate proceedings and in the Commission's audit program. FERC Form 2-A data are also used to compute annual charges which are assessed against each jurisdictional natural gas pipeline and which are necessary to recover the Commission's annual costs. The annual charges are required by section 3401 of the Omnibus Budget Reconciliation Act of 1986.

The annual financial information filed with the Commission is a mandatory requirement submitted in a prescribed format which is filed electronically and on paper. The Commission implements these filing requirements in 18 CFR Parts 158, 201, 260.2 and 385.2011.

5. *Respondent Description:* The respondent universe currently comprises 43 companies (on average) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 4,945 total hours, 43 respondents (average), 1 response per respondent, and 115 hours per response (average).

7. *Estimated Cost Burden to respondents:* 4,945 hours/2080 hours per years × \$117,321 per year = \$290,369. The cost per respondent is equal to \$6,753.

**Statutory Authority:** Statutory provisions of sections 205 (a) and (e) of the Federal Power Act, 16 U.S.C. 824d.

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7-6320 Filed 4-4-07; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[IC07-6-001, FERC FORM 6]

#### Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

March 30, 2007.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received comments from one entity in response to an earlier **Federal Register** notice of December 15, 2006 (71 FR 75522-75523) and has provided a response to the commenters in its submission to OMB. Copies of the submission were also submitted to the commenter.

**DATES:** Comments on the collection of information are due by May 4, 2007.

**ADDRESSES:** Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202-395-4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED-34, *Attention:* Michael

Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings an original and 14 copies, of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC07-6-001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at <http://www.ferc.gov> and click on "Make an E-Filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202-502-8258 or by e-mail to [efiling@ferc.gov](mailto:efiling@ferc.gov). Comments should not be submitted to this e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For user assistance, contact [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202)502-8415, by fax at (202)273-0873, and by e-mail at [michael.miller@ferc.gov](mailto:michael.miller@ferc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Description

*The information collection submitted for OMB review contains the following:*

1. *Collection of Information:* FERC 6 "Annual Report of Oil Pipeline Companies."
2. *Sponsor:* Federal Energy Regulatory Commission.
3. *Control No.:* 1902-0022.

The Commission is now requesting that OMB approve and extend the expiration date for an additional three years with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary for the Commission to carry out its responsibilities in implementing the

statutory provisions of the Interstate Commerce Act (ICA), (49 U.S.C.). The ICA authorizes the Commission to make investigations and to collect and record data and to prescribe rules and regulations concerning accounts, records and memoranda as necessary or appropriate for purposes of administering the ICA. The Commission may prescribe a system of accounts for jurisdictional companies and, after notice and opportunity for hearing may determine the accounts in which particular outlays and receipts will be entered, charged or credited. Every pipeline carrier subject to the provisions of Section 20 of the ICA must electronically file with the Commission through Commission-provided software.

The Commission's Office of Enforcement uses the collected FERC Form 6 data to assist in the implementation of its financial audits and investigation programs, in the continuous review of the financial condition of regulated companies and in the assessment of energy markets. The Office of Energy Markets and Reliability (OEMR) uses the data collected for its various rate proceedings and economic analyses. The Office of Administrative Litigation (OAL) uses the data collected for background research for use in litigation. The Office of General Counsel uses the data in its programs relating to the administration of the ICA. Additionally, the Office of the Executive Director (OED) uses the data contained on certain schedules of the FERC Form 6 to compute annual charges which are then assessed against oil pipeline companies to recover the Commission's annual costs. These annual charges are required by Section 3401 of the Budget Act.

Most notably, the ICA mandates the collection of information needed by the Commission to perform its regulatory responsibilities in the setting of the just and reasonable rates. The Commission could be held in violation of the ICA if the information was not collected.

The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Section 357.1 and 357.2.

5. *Respondent Description:* The respondent universe currently comprises 155 companies (on average) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 28,830 total hours, 155 respondents (average), 1 response per respondent, and 189 hours per response (average).

7. *Estimated Cost Burden to respondents:* 28,830 hours/2080 hours per years × \$117,321 per year =

\$1,692,889. The cost per respondent is equal to \$10,922.

**Statutory Authority:** Statutory provisions of 49 App. U.S.C. §§ 1–85 (1988).

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7–6321 Filed 4–4–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[IC07–6Q–001, FERC 6Q]

#### Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

March 30, 2007.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of December 15, 2006 (71 FR 75523–75524) and has made this notation in its submission to OMB.

**DATES:** Comments on the collection of information are due by May 4, 2007.

**ADDRESSES:** Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, *c/o oira\_submission@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–34, *Attention:* Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings an original and 14 copies, of such

comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426 and should refer to Docket No. IC07–6Q–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-Filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to this e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202)502–8415, by fax at (202)273–0873, and by e-mail at *michael.miller@ferc.gov*.

#### SUPPLEMENTARY INFORMATION:

##### Description

*The information collection submitted for OMB review contains the following:*

1. *Collection of Information:* FERC 6Q "Quarterly Financial Report of Oil Pipeline Companies."
2. *Sponsor:* Federal Energy Regulatory Commission.
3. *Control No.:* 1902–0206.

The Commission is now requesting that OMB approve and extend the expiration date for an additional three years with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary for the Commission to carry out its responsibilities in implementing the statutory provisions of the Interstate Commerce Act (ICA), (49 U.S.C.). Although the Commission requires jurisdictional entities to file financial information, a general weakness in this reporting program has been the frequency with which the financial

reports are required. In a rapidly changing business environment, annual reporting is simply insufficient. Financial accounting and reporting provides needed information concerning a company's past performance and its future prospects. Without reliable financial statements prepared in accordance with the Commission's Uniform System of Accounts and related regulations, the Commission would be unable to accurately determine the costs that relate to a particular time period, service or line of business. Additionally, it would be difficult to determine whether a given entity has previously been given the opportunity to recover its cost through rates, or to compare how the financial performance and results of operations of one regulated entity relates to that of another.

The need for current and better disclosures in financial statements drives the increasing demand for timely, relevant and reliable financial information. As such, the FERC Form 6-Q Quarterly Report provides the Commission with a more timely and informative picture of the jurisdictional oil pipeline entities' financial and operational condition.

More specifically, the Commission's Office of Enforcement (OE) uses the FERC Form 6-Q data collected to assist in the implementation of its financial and operational audits and investigation programs, in the review of the financial condition of regulated companies, and in the assessment of energy markets. The Office of Energy Markets and Reliability (OEMR) uses the data collected for its various rate proceedings and economic analysis. The Office of Administrative Litigation (OAL) uses the data collected for background research for use in litigation. The Office of General Counsel (OGC) uses the data in its programs relating to the administration of the ICA.

5. *Respondent Description:* The respondent universe currently comprises 138 companies (on average) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 62,100 total hours, 138 respondents (average), 3 responses per respondent, and 150 hours per response (average).

7. *Estimated Cost Burden to respondents:* 62,100 hours/2080 hours per years × \$117,321 per year = \$3,646,494. The cost per respondent is equal to \$26,424.

**Statutory Authority:** 49 App. U.S.C. §§ 1–85 (1988).

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7–6322 Filed 4–4–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2205–039]

#### Central Vermont Public Service Commission; Notice Dismissing Filing as Deficient

March 30, 2007.

On February 13, 2007, Commission staff issued an order modifying and approving a recreation plan under article 415 of the project license for the Lamoille Hydroelectric Project, located on the Lamoille River in Chittenden, Franklin, and Lamoille Counties, Vermont.<sup>1</sup> On March 14, 2007, Central Vermont Public Service Corporation (Central Vermont or the licensee) filed a timely request for rehearing, seeking to modify the February order.

Specifically, the licensee requests rehearing of a provision in the February order regarding an access area for canoes and car-top boats at the south end of Arrowhead Mountain Reservoir. The February order modified the licensee's recreation plan. Ordering paragraph (C) of the February order provided that:

The licensee shall acquire title in fee or the right to use in perpetuity all lands necessary to improve the access area at the south end of Arrowhead Mountain Reservoir to provide carry-in access for canoes and car-top boats. The licensee shall file documentation of the land acquisition with the Commission and include the access area at the south end of Arrowhead Mountain Reservoir in the as-built drawings.

The licensee requests that the paragraph (C) requirement be deleted and suggests that, instead, the licensee will conduct a study of alternative access sites.

The licensee's rehearing request is deficient because it fails to include a Statement of Issues section separate from its arguments, as required by Rule 713 of the Commission's Rules of Practice and Procedure.<sup>2</sup> Rule 713(c)(2)

<sup>1</sup> 118 FERC ¶ 62,125 (2007).

<sup>2</sup> 18 C.F.R. § 385.713(c)(2) (2006). See *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663, 70 FR 55723 (September 23, 2005), *FERC Statutes and Regulations* ¶ 31,193 (2005). See also, Order 663–A, effective March 23, 2006, which amended Order 663 to limit its applicability to rehearing requests. *Revision of Rules of Practice and Procedure*

requires that a rehearing request must include a separate section entitled "Statement of Issues" listing each issue presented to the Commission in a separately enumerated paragraph that includes representative Commission and court precedent on which the participant is relying.<sup>3</sup> Under Rule 713, any issue not so listed will be deemed waived. Accordingly, Central Vermont's rehearing request is dismissed.<sup>4</sup>

We note that, even if the pleading had included the required statement of facts, we would nevertheless deny rehearing. Central Vermont concedes that "the provision of public access for canoes and car-top boats at the south end of [Arrowhead Mountain Reservoir] is desired," and that "no detailed analysis of alternative south end access for canoes and car-top boats has been performed." It shows no deficiency in the February order, but merely speculates that some other form of access might be preferable. Accordingly, we find the request for rehearing to be without merit.<sup>5</sup>

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7–6325 Filed 4–4–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP07–364–000]

#### Destin Pipeline Company, L.L.C.; Notice of Tariff Filing and Non-Conforming Service Agreement

March 30, 2007.

Take notice that on March 23, 2007, Destin Pipeline Company, L.L.C. (Destin) tendered for filing with the

*Regarding Issue Identification*, Order No. 663–A, 71 FR 14640 (March 23, 2006), *FERC Statutes and Regulations* ¶ 31,211 (2006).

<sup>3</sup> As explained in Order No. 663, the purpose of this requirement is to benefit all participants in a proceeding by ensuring that the filer, the Commission, and all other participants understand the issues raised by the filer, and to enable the Commission to respond to these issues. Having a clearly articulated Statement of Issues ensures that issues are properly raised before the Commission and avoids the waste of time and resources involved in litigating appeals regarding which the courts of appeals lack jurisdiction because the issues on appeal were not clearly identified before the Commission. See Order No. 663 at P 3–4.

<sup>4</sup> See, e.g., *South Carolina Electric & Gas Company*, 116 FERC ¶ 61,218 (2006); and *Duke Power Company, LLC*, 116 FERC ¶ 61,171 (2006).

<sup>5</sup> We note that the licensee may file a request for an amendment to the license that would allow for the consideration of an alternative site for an access area, but note that such a proposal would require consultation with relevant resource agencies as well as public notice with the opportunity for comment.

Commission as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 258, with an effective date of April 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7-6330 Filed 4-4-07; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP07-53-000]

#### Downeast Pipeline, LLC; Notice of Public Availability of Pro Forma Tariff Filing

March 30, 2007.

This is to provide notice that the *pro forma* tariff filed on December 22, 2006, by Downeast Pipeline, LLC as part of Exhibit P to its certificate application in Docket No. CP07-53-000 is now publicly accessible through the Commission's eLibrary records information system.

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7-6318 Filed 4-4-07; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP07-365-000]

#### Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff and Filing of Non-Conforming Service Agreements

March 30, 2007.

Take notice that on March 28, 2007, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 the following tariff sheets, to be effective April 28, 2007.

1st Revised Second Revised Sheet No. 370  
First Revised Sheet No. 395  
First Revised Sheet No. 396  
First Revised Sheet No. 397  
First Revised Sheet No. 398  
Second Revised Sheet No. 399.

Northwest also tendered for filing eight Rate Schedule TF-1 non-conforming service agreements.

Northwest states that the purpose of this filing is to (1) Submit eight restated Rate Schedule TF-1 service agreements containing non-conforming provisions for Commission acceptance, and (2) revise the list of nonconforming service agreements in Northwest's tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7-6331 Filed 4-4-07; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-614-002]

#### Transwestern Pipeline Company, LLC; Notice of Motion To Place Settlement Rates Into Effect

March 30, 2007.

Take notice that on March 23, 2007, Transwestern Pipeline Company, LLC (Transwestern) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective April 1, 2007:

Substitute Fourth Revised Sheet No. 5  
Substitute Fourth Revised Sheet No. 5A  
Second Revised Sheet No. 5A.01  
Sixth Revised Sheet No. 5A.02  
Substitute Fifth Revised Sheet No. 5B

Substitute First Revised Sheet No. 5C  
 Substitute First Revised Sheet No. 5D  
 Substitute Original Sheet No. 5D.01  
 Substitute First Revised Sheet No. 5E

Transwestern states that the purpose of this filing is to move into effect settlement rates contained in a settlement filed on March 9, 2007.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on April 6, 2007.

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7-6329 Filed 4-4-07; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings # 1

March 30, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG07-44-000.

*Applicants:* Brush Cogeneration Partners.

*Description:* Altura Power, LP submits notice of self-certification of exempt

wholesale generator status under EG07-14.

*Filed Date:* 3/28/2007.

*Accession Number:* 20070330-0018.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, April 18, 2007.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER07-371-001.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc. submits its response to FERC's 2/27/07 additional information request regarding a proposal to revise Schedule 2 of its Open Access Transmission Tariff.

*Filed Date:* 3/29/2007.

*Accession Number:* 20070330-0013.

*Comment Date:* 5 p.m. Eastern Time on Thursday, April 19, 2007.

*Docket Numbers:* ER07-663-000.

*Applicants:* Conectiv Energy Supply, Inc.

*Description:* Conectiv Energy Supply, Inc requests authorization to make wholesale power sales to its affiliate Delmarva Power & Light Co under the terms of CESI's market-based rate tariff.

*Filed Date:* 3/27/2007.

*Accession Number:* 20070328-0025.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 17, 2007.

*Docket Numbers:* ER07-665-000.

*Applicants:* RC Cape May Holdings, LLC.

*Description:* RC Cape May Holdings, LLC submits a rate schedule that specifies its revenue requirement for providing Reactive Support and Voltage Control from Generation Sources Service.

*Filed Date:* 3/27/2007.

*Accession Number:* 20070330-0010.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 17, 2007.

*Docket Numbers:* ER07-666-000.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc submits an executed Small Generator Interconnection Agreement with Hardin Hilltop Wind, LLC *et al.*

*Filed Date:* 3/27/2007.

*Accession Number:* 20070330-0009.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 17, 2007.

*Docket Numbers:* ER07-668-000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement with Emporia Hydropower Limited Partnership *et al.*

*Filed Date:* 3/28/2007.

*Accession Number:* 20070329-0069

*Comment Date:* 5 p.m. Eastern Time on Wednesday, April 18, 2007.

*Docket Numbers:* ER07-670-000.

*Applicants:* Entergy Services, Inc.  
*Description:* Entergy Services, Inc acting as agent for the Entergy Operating Companies submits an executed Network Integration Transmission Service Agreement w/Louisiana Energy and Power Authority etc.

*Filed Date:* 3/28/2007.

*Accession Number:* 20070330-0021.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, April 18, 2007.

*Docket Numbers:* ER07-671-000.

*Applicants:* Trigen-St. Louis Energy Corporation.

*Description:* Trigen-St Louis Energy Corporation submits an Application for order granting blanket approvals, proposed market-based rate tariff.

*Filed Date:* 3/28/2007.

*Accession Number:* 20070330-0017.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, April 18, 2007.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES07-28-000.

*Applicants:* PSEG Nuclear LLC; PSEG Fossil LLC; PSEG Energy, Trade & Resources LLC.

*Description:* PSEG Power Companies submit their request for Blanket Authorization to Issue Securities.

*Filed Date:* 3/28/2007.

*Accession Number:* 20070328-5047.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, April 18, 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7-6332 Filed 4-4-07; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP00-6-014]

#### **Gulfstream Natural Gas System, L.L.C.; Notice of Availability of the Environmental Assessment for the Proposed Gulfstream Phase III Pipeline Project**

March 30, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Gulfstream Natural Gas System, L.L.C. (Gulfstream) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major

federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of approximately 34.30 miles of 30-inch-diameter pipeline and associated aboveground facilities in Martin County and Palm Beach County, Florida. The pipeline would commence at Gulfstream's existing Station 712 in Martin County and would terminate at a newly constructed Station 705 that would connect to the proposed Florida Power & Light Company (FPL) West County Energy Center (WCEC) in Palm Beach County. Gulfstream has executed firm service agreement with FPL to deliver 345,000 decatherms per day (Dth/d) of natural gas to the WCEC for a primary term of 23 years. Approximately 7.15 miles of the proposed pipeline route follows the Line 700 route previously certificated by the Commission in February 2001 under Docket No. CP00-006.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502-8371.

Copies of the EA have been mailed to federal; state; and local agencies; public interest groups; individuals who have requested the EA; libraries; newspapers; and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Branch 3;
- Reference Docket No. CP00-6-014; and
- Mail your comments so that they will be received in Washington, DC on or before April 30, 2007.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Sign-up."

Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).<sup>1</sup> Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site (<http://www.ferc.gov>) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov) or toll free at 1-866-208-3676, or for TTY, contact (202)502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to <http://www.ferc.gov/esubscribenow.htm>.

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7-6313 Filed 4-4-07; 8:45 am]

**BILLING CODE 6717-01-P**

<sup>1</sup> Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

**DEPARTMENT OF ENERGY****Federal Energy Regulatory  
Commission**

[Project Nos. 11437-016]

**Hydro Matrix Limited Partnership;  
Notice of Availability of Environment  
Assessment**

March 30, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, the Office of Energy Projects has reviewed the Hydro Matrix Limited Partnership's (licensee) application requesting the Commission's authorization to amend its license for the Jordan Dam Hydroelectric Project. The licensee proposes to install two generating units rated at 2200 kW, rather than the authorized eighty 100 kW units. This would reduce the generating capacity of the project from 8.0 MW to 4.4 MW, and reduce the hydraulic capacity of the project from 2320 cubic feet per second (cfs) to 1200 cfs. The unconstructed project is located at the U.S. Army Corps of Engineers (Corps) B. Everett Jordan Dam on the Haw River, in Chatham County, North Carolina. An environmental assessment (EA) has been prepared.

In the EA, the Commission's staff concludes that approval of the licensee's application would not constitute a major federal action significantly affecting the quality of the human environment. No ground disturbing activities are involved with the licensee's proposal.

A copy of the EA is attached to a Commission order titled "Order Amending License and Revising Annual Charges," issued March 30, 2007, and is available at the Commission's Public Reference Room. A copy of the EA may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "elibrary" link. Enter the docket number (P-11437) in the docket field to access the document. For assistance, call (202) 502-8222 or (202) 502-8659 (for TTY).

**Philis J. Posey,***Acting Secretary.*

[FR Doc. E7-6324 Filed 4-4-07; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory  
Commission**

[Docket Nos. CP06-470-000; CP06-471-000; CP06-472-000; CP06-473-000; CP06-474-000]

**Southern LNG Inc.; Elba Express  
Company, L.L.C.; Southern Natural  
Gas Company; Notice of Availability of  
the Draft Environmental Impact  
Statement for the Elba III Project**

March 30, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft Environmental Impact Statement (EIS) for the Elba III Project, proposed by Southern LNG Inc. (Southern LNG), Elba Express Company, L.L.C. (EEC), and their parent company Southern Natural Gas Company (Southern), a subsidiary of El Paso Corporation. As described in the above-referenced dockets, this project would consist of the following components:

- Southern LNG's expansion of the existing Elba Island Liquefied Natural Gas (LNG) Import Terminal near Savannah in Chatham County, Georgia;
- EEC's construction and operation of natural gas pipeline and compression facilities (Elba Express Pipeline) extending between existing facilities owned by Southern in Chatham County and those of Transcontinental Gas Pipe Line Corporation (Transco) in Hart County, Georgia and Anderson County, South Carolina; and
- Southern's abandonment by sale to EEC of an undivided interest in its pipeline facilities that extend between the LNG import terminal and the existing Port Wentworth Meter Station (where the Elba Express Pipeline would begin), and purchase of an undivided interest in the first 10 miles of the Elba Express Pipeline.

The draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), and was completed with the cooperation of the U.S. Coast Guard (Coast Guard), the U.S. Army Corps of Engineers (COE), and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries). A cooperating agency has jurisdiction by law or special expertise with respect to potential environmental impacts associated with the proposal, and participates in the NEPA analysis.

The Coast Guard is responsible for determining the suitability of a waterway for LNG marine traffic; in this instance, the determination would be

issued as a Letter of Recommendation with conditions. The Captain of the Port Savannah is the point of contact for this action. The COE would need to evaluate the project and issue Section 404 Permits for wetland impacts associated with expansion of the terminal and pipeline construction, easements where the pipeline would cross COE-managed lands, modifications to existing COE Mitigation Lands, and an approval for a large fuel-carrying pipeline to cross federal property. NOAA Fisheries has responsibilities for evaluating potential impacts on essential fish habitat and threatened or endangered aquatic species.

The FERC staff has concluded that if the project is constructed and operated in accordance with applicable laws and regulations, each project sponsor's proposed mitigation, and the staff's additional mitigation recommendations, it would have limited adverse environmental impact and would be an environmentally acceptable action.

The draft EIS addresses the potential environmental effects of construction and operation of the following LNG terminal and natural gas pipeline facilities:

**Elba Terminal Expansion**

The proposed expansion of the existing LNG import terminal would: (a) More than double the site's LNG storage capacity by adding 405,000 cubic meters (m<sup>3</sup>) of new storage; (b) substantially increase the facility's existing vaporization capacity; (c) upgrade the terminal's send-out meter station to increase the natural gas send-out capacity of the facility by an additional 900 million cubic feet per day (MMcfd); and (d) modify the terminal's LNG tanker berthing and unloading facilities to accommodate larger tankers and provide for simultaneous unloading of two LNG tankers. All of the planned facilities would be located entirely within the existing 190-acre facility site on Elba Island.

The LNG terminal expansion would be constructed in two phases, A and B. Southern LNG anticipates completing Phase A as early as January 2010. Phase A would include the following facilities:

- a. One new 200,000-m<sup>3</sup> (1.25 million barrels [bbls]) LNG storage tank, one associated boil-off gas condenser, and three boil-off gas compressors;
- b. three submerged combustion vaporizers, each with a peak capacity of 180 MMcfd (providing a total peak send-out capacity of 1,755 MMcfd for the full facility at the completion of phase A); and
- c. modifications to the unloading docks to accommodate larger LNG

tankers and to allow simultaneous unloading of two LNG tankers. The modifications to the dual berthing slip include:

- Adding four mooring dolphins (two for each berth);
- dredging approximately 72,000 cubic yards of material from the slope at the back of the existing slip (and disposing of dredged material into the existing spoil disposal area adjacent to the terminal); and
- installing a sheet pile bulkhead at the back of the slip.

These modifications would allow the slip to accommodate larger LNG tankers with an approximate overall length of 345 meters (m) (compared to the current 288 m), breadth of 55 m (currently 49 m), design laden draft of 12.0 m (currently 11.7 m), and displacement of 177,000 metric tons (currently 128,000 metric tons).

Phase B would be completed no later than December 2012 and would include the following facilities:

- a. one new 200,000-m<sup>3</sup> (1.25 million bbls) LNG storage tank; and
- b. three submerged combustion vaporizers (two for service and one spare), each with a peak capacity of 180 MMcfd (providing a total peak send-out capacity of 2,115 MMcfd for the full facility at the completion of phase B).

Each phase would include all necessary ancillary equipment including related pumps, piping, controls and appurtenances, and associated systems (electrical, mechanical, civil, instrumentation, hazard detection, and fire protection) and buildings necessary to accommodate the associated tanks and vaporizer units.

### Elba Express Pipeline

EEC proposes to construct and operate about 188 miles of new natural gas pipeline and appurtenant facilities in Georgia and South Carolina. The pipeline would be constructed in two phases. The first phase is proposed to be placed in service no later than July 2011 with a design capacity of 945 MMcfd, and would consist of:

- a. a "Southern Segment," which includes about 104.8 miles of 42-inch-diameter pipeline extending from Port Wentworth to the existing Southern Wrens Compressor Station (Wrens) in Jefferson County, Georgia (to be collocated with existing Southern pipelines); and

- b. a "Northern Segment," which includes about 83.1 miles of 36-inch-diameter pipeline extending from Wrens to interconnects with Transco in Hart County, Georgia, and Anderson County, South Carolina.

The second phase would involve construction and operation of a new 10,000-horsepower compressor station near Millen, Jenkins County, Georgia, on a site where Southern currently operates other aboveground facilities. The compressor station would increase the pipeline design capacity by 230 MMcfd to a total of 1,175 MMcfd, and is proposed to be placed in service no later than January 2013.

The draft EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502-8371.

CD-ROM copies of the draft EIS have been mailed to federal, state, and local agencies; public interest groups; individuals and affected landowners who requested a copy of the draft EIS or provided comments during scoping; libraries and newspapers in the project area; and parties to this proceeding. Hard copy versions of the draft EIS were mailed to those specifically requesting them. A limited number of hard copies and CD-ROMs are available from the Public Reference Room identified above.

### Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that the Commission receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received and properly recorded:

- Send an original and two copies of your comments to: Philis J. Posey, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.
- Reference Docket Nos. CP06-470-000, et al.
- Label one copy of the comments for the attention of Gas Branch 1, DG2E.
- Mail your comments so that they will be received in Washington, DC on or before May 21, 2007.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account, which can be created by clicking on "Login to File" and then "New User

Account." You will be asked to select the type of filing you are making. This filing is considered a "Comment on Filing."

In lieu of sending written comments, you are invited to attend public comment meetings the FERC staff will conduct in the project area to receive comments on the draft EIS. Date, time, and location of these meetings will be sent under separate cover. Interested groups and individuals are encouraged to attend and present oral comments on the draft EIS. Transcripts of the meetings will be prepared.

After these comments are reviewed, any significant new issues are investigated, and modifications are made to the draft EIS, a final EIS will be published and distributed. The final EIS will contain the FERC staff's responses to timely comments received on the draft EIS.

Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as specified above.<sup>1</sup> You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site ([www.ferc.gov](http://www.ferc.gov)) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at 1-866-208-3676, or for TTY, contact (202) 502-8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings,

<sup>1</sup> Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

document summaries and direct links to the documents. Go to the eSubscription link on the FERC Internet Web site.

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7-6315 Filed 4-4-07; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP06-115-000]

#### Texas Eastern Transmission, LP; Notice of Availability of the Environmental Assessment for the Proposed Texas Eastern Incremental Market Expansion II Project

March 30, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Texas Eastern Transmission, LP (Texas Eastern) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of Texas Eastern's proposed Texas Eastern Incremental Market Expansion II Project (TIME II). The TIME II project would involve construction, replacement, and operation of facilities by Texas Eastern Transmission, LP (Texas Eastern) in Pickaway and Monroe Counties, Ohio and Somerset, Bedford, Franklin, Bucks, Fayette, and Adams Counties, Pennsylvania. The purpose of the facilities is to provide up to 150,000 dekatherms per day of new transportation service to the New Jersey market area.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502-8371.

Copies of the EA have been mailed to federal, state, and local agencies, public interest groups, interested individuals,

newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Sign-up."

If you are filing written comments, please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Philis J. Posey, Acting Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Reference Docket No. CP06-115-000;
- Label one copy of the comments for the attention of the Gas Branch 1, PJ-11.1; and
- Mail your comments so that they will be received in Washington, DC on or before April 30, 2007.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).<sup>1</sup> Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site (<http://www.ferc.gov>) using the eLibrary link. Click on the eLibrary link, click on "General Search"

<sup>1</sup> Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov) or toll free at 1-866-208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to <http://www.ferc.gov/esubscribenow.htm>.

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7-6314 Filed 4-4-07; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP07-14-000; BLM Reference No. 2880/UTU-82750 and WYW-67229 (EA No. UT-080-06-156)]

#### Wyoming Interstate Company, Ltd.; Notice of Availability of the Environmental Assessment for the Proposed Kanda Lateral and Mainline Expansion Project

March 30, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission), with the cooperation of the U.S. Department of Interior, Bureau of Land Management (BLM) and the Sweetwater County Conservation District, has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Wyoming Interstate Company, Ltd. in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed Kanda Lateral and Mainline Expansion Project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The BLM is participating as a cooperating agency in the preparation of the EA because the project would cross federal lands under BLM administration

in Utah and Wyoming. The EA will be used by the BLM to consider the issuance of a right-of-way grant for the portion of the project on Federal lands.

The EA assesses the potential environmental effects of the construction and operation of the proposed project. The project is comprised of two components. The first component includes 123.7 miles of 24-inch-diameter pipeline commencing at a new interconnect in Uintah County, Utah and traversing in a northerly direction through Daggett County, Utah to a proposed interconnect in Sweetwater County, Wyoming. The second component involves the installation of two compressor units at the existing Wamsutter Compressor Station located in Sweetwater County, Wyoming. The proposed pipeline would deliver up to 400,000 decatherms per day to Kerr-McGee Corporation in response to increasing gas production in the Uintah Basin in eastern Utah to West, Central, and Eastern markets. Additional pipeline facilities would consist of pig launchers/receivers, meter stations and associated interconnects, and mainline block valves.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502-8371.

Copies of the EA have been mailed to federal, state and local agencies, public interest groups, Native American tribes, interested individuals, local libraries, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Sign-up".

If you are filing written comments, please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Philis J. Posey, Acting Secretary, Federal Energy

Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

- Reference Docket No. CP07-14-000;
- Label one copy of the comments for the attention of the Gas Branch 1, PJ-11.1, and
- Mail your comments so that they will be received in Washington, DC on or before April 30, 2007.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).<sup>1</sup> Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site ([www.ferc.gov](http://www.ferc.gov)) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov) or toll free at 1-866-208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to [www.ferc.gov/esubscribenow.htm](http://www.ferc.gov/esubscribenow.htm).

Information concerning the involvement of the BLM is available

<sup>1</sup> Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

from Mark A. Mackiewicz, National Project Manager, at (435) 636-3616.

**Philis J. Posey,**  
*Acting Secretary.*

[FR Doc. E7-6316 Filed 4-4-07; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

March 30, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

- Application Type:* Non-project Use of Project Lands and Waters.
- Project No:* 2503-113.
- Date Filed:* March 19, 2007.
- Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Keowee-Toxaway Project (Keowee Development).

f. *Location:* Lake Keowee is located in Pickens and Oconee County, South Carolina. This project does not occupy any tribal or federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a) 825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Manager Lake Service; Duke Energy Carolinas, LLC; P.O. Box 1006; Charlotte, NC; 28201-1006; 704-382-8576.

i. *FERC Contact:* Any questions on this notice should be addressed to Jon Cofrancesco at (202) 502-8951 or by e-mail: [Jon.Cofrancesco@ferc.gov](mailto:Jon.Cofrancesco@ferc.gov).

j. *Deadline for filing comments and or motions:* April 30, 2007.

*All documents (original and eight copies) should be filed with:* The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the

Applicant specified in the particular application.

k. *Description of Application:* Duke Energy Carolinas, LLC (Duke), licensee for the Keowee-Toxaway Hydroelectric Project, has filed an application seeking authorization from the Federal Energy Regulatory Commission to lease to The Reserve at Lake Keowee (The Reserve), 10.77 acres of project lands located on Lake Keowee in Pickens County, South Carolina for access to the reservoir and the development of certain facilities that would serve the residents of The Reserve.

The Reserve proposes to develop Commercial/Residential and Commercial/Non-residential marina facilities at the site, consisting of 23 cluster docks with a total of 304 boat dock locations, an irrigation pump that would withdraw up to 2 million gallons of water a day from the lake, a docking location for fuel pumping and sewer pumpout facilities, and a dry stack storage facility that can accommodate up to 624 boats and includes a boat launching pier. The proposal would also involve dredging of 6,300 cubic yards of material, the use of a ferry to provide water access for property owners and golf carts to various locations on Lake Keowee (the ferry will not be moored at the site), and implementation of a mitigation plan to address existing encroachments of the golf course on project lands. The planned mitigation requires The Reserve to make various improvements to the project's Crow Creek Public Access Area and to provide ongoing maintenance of the area.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit

comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link.

**Philis J. Posey,**  
*Acting Secretary.*

[FR Doc. E7-6326 Filed 4-4-07; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

March 30, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Temporary Variance of Minimum Flow Requirement.

b. *Project No.:* 618-137.

c. *Date Filed:* March 30, 2007.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Jordan Dam.

f. *Location:* On the Coosa River, in Elmore, Chilton, and Coosa Counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791a-825r.

h. *Applicant Contact:* Alan L. Peebles, Alabama Power Company, 600 N.18th Street, P.O. Box 2641, Birmingham, AL 35291, (205) 257-1401.

i. *FERC Contact:* Peter Yarrington, [peter.yarrington@ferc.gov](mailto:peter.yarrington@ferc.gov), (202) 502-6129.

j. *Deadline for filing comments, motions to intervene and protests:* April 16, 2007.

*All documents (original and eight copies) should be filed with:* Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* The Alabama Power Company (APC) is requesting a temporary variance of the minimum flow requirement of the project license. Because of persistent drought conditions in the project area and the need to conserve water, APC requests that it be allowed to release from the Jordan Dam Project 3,000 cubic feet per second (cfs) April 1-June 15, 2007, instead of the 4,000 cfs required in the project license. Further, APC proposes to suspend the pulse flow release of 8,000 cfs during this period. Beginning June 16, 2007, the APC would return to flow release requirements specified in the license. Included in APC's request were concurrences received from the state and federal resource agencies.

l. *Location of the Application:* The filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426 or by calling (202) 502-8371, or by calling (202) 502-8371. This filing may also be viewed on the

Commission's Web site at <http://ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docsfiling/esubscription.asp> to be notified via e-mail or new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO

INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link.

**Philis J. Posey,**

*Acting Secretary.*

[FR Doc. E7-6327 Filed 4-4-07; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**Notice of FERC Staff Attendance at Southwest Power Pool Independent Coordinator of Transmission (ICT) Stakeholders Policy Committee Meeting**

March 30, 2007.

The Federal Energy Regulatory Commission hereby gives notice that

members of its staff may attend the meetings noted below. Their attendance is part of the Commission's ongoing outreach efforts.

*ICT Near-Term Transmission Issues Group*

*ICT WPP Issues Working Group Meeting*

April 10, 2007 (8 a.m.-5 p.m. CST),  
DoubleTree Hotel-Houston  
Intercontinental Airport, 15747  
John F. Kennedy Airport, Houston,  
Tx. 77032, 281-848-4000.

*ICT Long-Term Transmission Issues Working Group*

April 11, 2007 (8:30 a.m.-2 p.m. CST),  
DoubleTree Hotel-Houston  
Intercontinental Airport, 15747  
John F. Kennedy Airport, Houston,  
Tx. 77032, 281-848-4000.

*ICT Stakeholders Policy Committee Meeting*

April 17, 2007 (9 a.m.-3 p.m. CST),  
DoubleTree Hotel-Houston  
Intercontinental Airport, 15747  
John F. Kennedy Airport, Houston,  
Tx. 77032, 281-848-4000.

The discussions may address matters at issue in the following proceedings:

Docket No. EL01-88 .....	Entergy Services, Inc.
Docket No. ER05-1065 .....	Entergy Services, Inc.
Docket No. ER03-171 .....	Entergy Mississippi, Inc.
Docket No. EL02-107 .....	Duke Energy Hinds, LLC, Duke Energy Hot Spring, LLC, Duke Energy Southaven, LLC, Duke Energy North America, LLC v. Entergy Services, Inc., Entergy Operating Companies
Docket No. ER02-405 .....	Entergy Services, Inc.
Docket No. EL02-88 .....	Wrightsville Power Facility, L.L.C v. Entergy Arkansas, Inc.
Docket Nos. EL03-3, ER02-1472 .....	Entergy Gulf States, Inc.
Docket Nos. EL03-4, ER02-1151 .....	Entergy Services, Inc.
Docket Nos. EL03-5, ER02-1609 .....	Entergy Services, Inc.
Docket No. EL03-3 .....	Entergy Operating Companies
Docket No. ER02-1472 .....	Entergy Operating Companies
Docket No. ER07-406 .....	Entergy Operating Companies
Docket No. ER07-398 .....	Entergy Operating Companies
Docket No. ER07-399 .....	Entergy Operating Companies
Docket No. ER07-259 .....	Cleco Energy LLC
Docket No. EL03-4 .....	Entergy Operating Companies
Docket No. ER02-1069 .....	Entergy Operating Companies
Docket No. EL03-13 .....	Entergy Operating Companies
Docket No. ER02-2243 .....	Entergy Operating Companies
Docket No. EL05-15 .....	Arkansas Electric Cooperative Corporation v. Entergy Arkansas, Inc.
Docket No. EL06-76 .....	Arkansas Public Service Commission v. Entergy Services, Inc., et al.
Docket No. ER03-583 .....	Entergy Services, Inc. and EWO Marketing, L.P.
Docket Nos. ER03-681, ER03-682 .....	Entergy Services, Inc. and Entergy Power, Inc.
Docket No. ER03-744 .....	Entergy Services, Inc. and Entergy Louisiana, Inc.
Docket No. EL04-20 .....	Carville Energy LLC v. Entergy Services, Inc.
Docket No. EL04-49 .....	Quachita Power LLC v. Entergy Services, Inc.

Docket No. EL04-99 .....	Mississippi Delta Entergy Agency, et al.v. Entergy Services, Inc.
Docket No. EL05-1 .....	Union Power Partners v. Entergy Services, Inc.
Docket No. EL05-21 .....	Tenaska Frontier Partners v. Entergy Services, Inc.
Docket No. ER06-1555-000 .....	Entergy Services, Inc.
Docket Nos. ER03-1272, EL05-22 .....	Entergy Services, Inc.
Docket No. EL07-25 .....	Entergy Services, Inc.
Docket No. ER05-1358 .....	KGen Hinds LLC
Docket No. ER05-1394 .....	KGen Hot Spring LLC
Docket No. ER05-1419 .....	Hot Spring Power Company, LP

These meetings are open to the public.  
 For more information, contact John Rogers, Office of Energy Markets and Reliability, Federal Energy Regulatory Commission at (202) 502-8564 or [john.rogers@ferc.gov](mailto:john.rogers@ferc.gov).

**Philis J. Posey,**  
*Acting Secretary.*  
 [FR Doc. E7-6323 Filed 4-4-07; 8:45 am]  
**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. RM98-1-000]

**Records Governing Off-the-Record Communications; Public Notice**

March 30, 2007.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who

make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record

communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at (866)208-3676, or for TTY, contact (202) 502-8659.

Docket No.	Date received	Presenter or requester
<b>Prohibited</b>		
1. CP06-421-000 .....	3-14-07	Thomas R. Martin, Jr.
2. CP06-421-000 .....	3-23-07	Carl W. Levander.
<b>Exempt</b>		
1. CP06-54-000 .....	3-15-07	Hon. Hillary Rodham Clinton.
2. CP06-365-000 .....	3-19-07	Hon. Ron Wyden.
3. CP06-421-000 .....	3-14-07	Michael Frey.
4. CP06-421-000 .....	3-14-07	Hon. Tim Hugo.
5. CP06-354-000 .....	3-12-07	David Swearington.
6. CP06-354-000 .....	3-20-07	David Swearington.
7. Project No. 1971-079 .....	3-22-07	<sup>1</sup> Alan Mitchnick.

<sup>1</sup> Documents from tribal consultation meetings.

Philis J. Posey,  
Acting Secretary.

[FR Doc. E7-6328 Filed 4-4-07; 8:45 am]

BILLING CODE 6717-01-P

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## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### Aeronautics Science and Technology Subcommittee; Committee on Technology; National Science and Technology Council

**ACTION:** Notice of meeting—public consultation on the National Aeronautics Research and Development Plan and Related Infrastructure Plan.

**SUMMARY:** The Aeronautics Science and Technology Subcommittee (ASTS) of the National Science and Technology Council's (NSTC) Committee on Technology will hold a public meeting to discuss development of the National Aeronautics Research and Development (R&D) Plan and a related aeronautics R&D Infrastructure Plan. Executive Order (E.O.) 13419—National Aeronautics Research and Development—signed December 20, 2006, calls for the development of these Plans within one year. The Plans are to be guided by the National Aeronautics Research and Development Policy that was prepared by the National Science and Technology Council and endorsed by E.O. 13419. Details on white papers requested for submission to the ASTS will also be given at the meeting.

**DATES AND ADDRESSES:** The meeting will be held Tuesday, April 24, 2007, 2 p.m. to 5 p.m. (EST) in the auditorium of the National Academies of Sciences Building, 2101 Constitution Avenue, NW., Washington, DC 20418 (enter the building through the C Street entrance).

**FOR FURTHER INFORMATION CONTACT:** Jon Montgomery, Office of Aerospace and Automotive Industries, Room 4020, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482-3353, or visit the Office of Science and Technology Policy NSTC Web site at: <http://www.ostp.gov/nstc/aeroplans>.

**SUPPLEMENTARY INFORMATION:** E.O. 13419 and the National Aeronautics R&D Policy call for executive departments and agencies conducting aeronautics R&D to engage industry, academia and other non-Federal stakeholders in support of government planning and performance of aeronautics R&D. At this meeting, ASTS members will discuss the proposed structure and content of the National Aeronautics R&D Plan and related

Infrastructure Plan, including a taxonomy of aeronautics R&D, and expectations and potential outcomes of the Plans. The main purpose of the meeting is to obtain facts and information from individuals on these topic areas.

Following the public meeting on April 24, 2007, individuals in academia and industry and other aeronautics experts are invited to submit white papers to provide additional input into the development of the National Aeronautics R&D Plan and related Infrastructure Plan. Although the call for white papers is primarily intended to solicit viewpoints from outside of the Federal government, the Federal aeronautics R&D community is also welcome to respond. More specific details regarding content and submission of white papers will be provided at the meeting and posted on the Web at: <http://www.ostp.gov/nstc/aeroplans> following the meeting. Links to E.O. 13419 and the National Aeronautics R&D Policy are also available at this Web site.

This meeting will be physically accessible to people with disabilities. Seating is limited and will be on a first come, first served basis and hence registration is required. Registration, as well as requests for sign language interpretation or other auxiliary aids, should be submitted no later than April 18, 2007 to Jon Montgomery, Office of Aerospace and Automotive Industries, Room 4020, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482-3353, or e-mail [Jon.Montgomery@mail.doc.gov](mailto:Jon.Montgomery@mail.doc.gov).

**M. David Hodge,**

*Operations Manager, OSTP.*

[FR Doc. E7-6308 Filed 4-4-07; 8:45 am]

BILLING CODE 3170-W7-P

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## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

March 27, 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 June 4, 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 Jasmeet K. Seehra, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395-3123, or via fax at 202-395-5167 or via internet at [Jasmeet\\_K.\\_Seehra@omb.eop.gov](mailto:Jasmeet_K._Seehra@omb.eop.gov) and [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov), Federal Communications Commission, Room 1-B441, 445 12th Street, SW., DC 20554 or an e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov). If you would like to obtain or view a copy of this information collection after the 60 day comment period, you may do so by visiting the FCC PRA Web page at: <http://www.fcc.gov/omd/pr>.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judith B. Herman at 202-418-0214 or via the Internet at [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov).

### SUPPLEMENTARY INFORMATION:

*OMB Control Number:* 3060-0697.  
*Title:* Revision of Parts 22 and 90 to Facilitate Future Development of Paging Systems (Second Report and Order and Further Notice of Proposed Rulemaking, Memorandum Opinion and Order, Order on Reconsideration and Third Report and Order, WT Docket 96-18.

*Form No.:* N/A.

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

*Respondents:* Individuals or households; business or other for-profit, not-for-profit institutions, state, local or tribal government.

*Number of Respondents:* 450 respondents; 450 responses.

*Estimated Time Per Response:* 15 minutes to 1 hour (average).

*Frequency of Response:* On occasion reporting requirement and recordkeeping requirement.

*Obligation to Respond:* Required to obtain or retain benefits.

*Total Annual Burden:* 7,087 hours.

*Total Annual Cost:* \$113,600.

*Privacy Act Impact Assessment:* Yes.

*Nature and Extent of Confidentiality:*

This information collection contains personally identifiable information (PII). The FCC has a system of records notice (SORN), FCC/WTB-1, "Wireless Services Licensing Records," to cover the collection, maintenance, use(s), and destruction of this PII, which respondents may provide to the FCC as part of the information collection requirement(s). This SORN was published in the **Federal Register** on April 5, 2006 (71 FR 17234, 17269).

*Needs and Uses:* The Commission will submit this information collection to the OMB as a revision after this 60 day comment period to obtain the full three-year clearance from them. This information collection will be used by the Commission for the following purposes: (1) To facilitate the successful coexistence of incumbent and geographic area paging licensees; (2) to lessen the administrative burden on licensees and to simplify the paging licensing database; (3) to determine the partitioned service areas and the geographic area licensee's remaining service area of parties to a partitioning agreement; (4) to determine whether a geographic area licensee and parties to partitioning and disaggregation agreements have met the applicable coverage requirement for their respective service areas; (5) to determine whether an applicant is eligible to receive bidding credits as a small business; (6) to determine the real parties in interest of any joint bidding agreements; and (8) to determine the appropriate unjust enrichment compensation to be remitted to the government.

*OMB Control Number:* 3060-0865.

*Title:* Wireless Telecommunications Bureau Universal Licensing System Recordkeeping and Third Party Disclosure Requirements.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal government.

*Number of Respondents:* 70,645 respondents; 70,645 responses.

*Estimated Time Per Response:* 10 minutes to 1 hour (average).

*Frequency of Response:* On occasion reporting requirement, third party disclosure requirement, and recordkeeping requirement.

*Obligation to Respond:* Required to obtain or retain benefits.

*Total Annual Burden:* 63,457 hours.

*Total Annual Cost:* N/A.

*Privacy Act Impact Assessment:* Yes.

*Nature and Extent of Confidentiality:*

This information collection contains personally identifiable information (PII). The FCC has a system of records notice (SORN), FCC/WTB-1, "Wireless Services Licensing Records," to cover the collection, maintenance, use(s), and destruction of this PII, which respondents may provide to the FCC as part of the information collection requirement(s). This SORN was published in the **Federal Register** on April 5, 2006 (71 FR 17234, 17269).

*Needs and Uses:* The Commission will submit this information collection to the OMB as an extension (no change in reporting requirements) after this 60 day comment period to obtain the full three-year clearance from them.

The Commission has adjusted the number of respondents because they increased; therefore, the burden hours have also increased.

The purpose of this information collection is to continually streamline and simplify processes for wireless applicants and licensees, who previously used a myriad of forms for various wireless services and types of requests, in order to provide the Commission, information that has been collected in separate databases, each for a different group of services. Such processes have resulted in unreliable reporting, duplicate filings for the same licensees/applicants, and higher cost burdens to licensees/applicants. By streamlining the Universal Licensing System (ULS), the Commission eliminates the filing of duplicative applications for wireless carriers; increases the accuracy and reliability of licensing information; and enables all wireless applicants and licensees to file all licensing-related applications and other filings electronically, thus increasing the speed and efficiency of the application process. The ULS also benefits wireless applicants/licensees by reducing the cost of preparing applications, and speeds up the licensing process in that the Commission can introduce new entrants more quickly into this already competitive industry. Finally, ULS enhances the availability of licensing information to the public which has access to all publicly available wireless

licensing information on-line, including maps depicting a licensee's geographic service area.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7-6395 Filed 4-4-07; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Notices

**DATE AND TIME:** Tuesday, April 10, 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.

**PERSON TO CONTACT FOR INFORMATION:**

Mr. Robert Biersack, Press Officer,  
*Telephone:* (202) 694-1220.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. 07-1714 Filed 4-3-07; 2:56 pm]

**BILLING CODE 6715-01-M**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in

writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 30, 2007.

#### A. Federal Reserve Bank of

**Richmond** (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Sandy Spring Bancorp., Inc.*, Olney, Maryland; to acquire 100 percent of the voting securities of CN Bancorp, Inc., Glen Burnie, Maryland, and thereby indirectly acquire voting shares of County National Bank, Glen Burnie, Maryland.

Board of Governors of the Federal Reserve System, April 2, 2007.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E7-6333 Filed 4-4-07; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E7-4980) published on pages 12800-12801 of the issue for Monday, March 19, 2007.

Under the Federal Reserve Bank of New York heading, the entry for The Bank of New York Mellon Corporation, New York, New York, is revised to read as follows:

**A. Federal Reserve Bank of New York** (Anne McEwen, Financial Specialist) 33 Liberty Street, New York, New York 10045-0001:

1. *The Bank of New York Mellon Corporation*, New York, New York; to become a bank holding company by acquiring and merging with The Bank of New York Company, Inc., New York, New York, and thereby indirectly acquire The Bank of New York, New York, New York; B.N.Y. Holdings (Delaware) Corporation, Newark, Delaware; The Bank of New York (Delaware), Newark, Delaware; Mellon Financial Corporation, Pittsburgh,

Pennsylvania; Mellon Bank, N.A., Pittsburgh, Pennsylvania; Mellon United National Bank, Miami, Florida; Mellon 1st Business Bank, National Association, Los Angeles, California; and Mellon Trust of New England, N.A., Boston, Massachusetts. In connection with this proposal, The Bank of New York Company, Inc., and Mellon Financial Corporation have also requested approval to hold and exercise options to purchase up to 19.9 percent of each other's common shares.

Comments on this application must be received by April 13, 2007.

Board of Governors of the Federal Reserve System, March 30, 2007.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E7-6334 Filed 4-4-07; 8:45 am]

**BILLING CODE 6210-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator for Health Information Technology, American Health Information Community Chronic Care Workgroup Meeting

**ACTION:** Announcement of meeting.

**SUMMARY:** This notice announces the 14th meeting of the American Health Information Community Chronic Care Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92-463, 5 U.S.C., App.).

**DATES:** April 16, 2007, from 10 a.m. to 12 p.m. Eastern Daylight Time.

**ADDRESSES:** Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. Please bring photo ID for entry to a Federal building.

**FOR FURTHER INFORMATION CONTACT:** <http://www.hhs.gov/healthit/ahic/chroniccare/>.

**SUPPLEMENTARY INFORMATION:** The Workgroup will discuss barriers to availability of care in the virtual setting. The meeting will be available via Web cast. For additional information, go to: [http://www.hhs.gov/healthit/ahic/chroniccare/cc\\_instruct.html](http://www.hhs.gov/healthit/ahic/chroniccare/cc_instruct.html).

**Judith Sparrow,**

*Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. 07-1669 Filed 4-4-07; 8:45 am]

**BILLING CODE 4150-24-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60 Day-07-07AS]

### 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 Joan Karr, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to [omb@cdc.gov](mailto: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

Focus Group Testing and Survey on Radiological Event Messages for Public Health Workers—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

#### *Background and Brief Description*

In January 2003, CDC held a roundtable to specifically address communications needs likely to arise in the aftermath of a terrorist event involving mass casualties. Hospital administrators and clinicians, public health practitioners, and emergency planners emphasized the gaps in their training and in their knowledge of how to respond to nuclear or radiological events.

Concurrent with this, CDC began working with the Association of Schools

of Public Health (ASPH) to assess knowledge, attitudes, and behaviors related to preparedness for a radiological or nuclear terrorist event in the United States. The strong and clear message delivered to the CDC was that both the professional (e.g., clinicians and public health workers) and the lay American public were unprepared to respond to such an event (Becker 2004). Specifically, clinicians who participated in the research acknowledged a lack of training and preparedness, a potential unwillingness to treat patients if they are perceived as radiologically contaminated, and concerns about public panic and consequent overwhelming of hospitals and other clinical systems. More importantly, findings from the meeting revealed a critical need to assess communication preparedness among public health workers in relation to radiological emergencies.

This proposal addresses the need for the development of clear communication messages in the event of a radiological incident. As part of a cooperative agreement, CDC has contracted with the National Public Health Information Coalition (NPHIC) to collect data from public health workers in 6 states—California, Iowa, Kansas, Michigan, North Carolina and South Carolina—to evaluate a set of messages that have been developed by CDC for public health workers to use before, during and after a radiological event. The 5 communication messages focus on the main concerns expressed by

representatives from these 6 states and other participants in audience research. The participating states volunteered for this project. Public health workers referenced in this proposal are nurses, physicians, clinical technicians, administrative, management and support staff and epidemiologists.

CDC's primary goal is to protect the health and safety of the public. Since public health workers are usually first responders in various capacities in the event of a radiological emergency, the need to develop time-sensitive and consistent communication messages is vital. Developing clear messages that can be used by public health workers as an integral part of their radiological emergency plan is consistent with this goal. These message concepts, which range from how to protect the worker and family to the role of the public health worker during a radiological emergency will serve as a reference tool and guidance for state health departments in the event of such situations.

This proposal seeks approval to obtain data using two methods—focus group testing and electronic surveys—to achieve greater results. Focus group testing will be conducted to obtain qualitative data that will be gathered through a series of six focus groups of public health workers, one in each participating state. Each focus group will consist of 12 participants to equal 72 respondents, and will be about 1½ hour in length. The focus group testing will assess attitudes, knowledge and

emotional response. Of particular interest will be how the participants might react to radiological concepts pertaining to their roles as public health workers and scenarios that will be included in the messages. Quantitative data will be obtained through a one-time electronic survey to randomly selected public health workers in the six states to equal 2,022 respondents. The participants who will be participating in the electronic survey will not be included in the focus group testing.

CDC proposes to use this information to develop a final set of communication messages. The intent is for the messages to be disseminated using various methods and to provide a more consistent platform for states to respond to radiological emergencies. This research will help refine messages that have the ability to increase the percentage of workers who present to deliver services in a radiological emergency. Also, as a result of the study, CDC will have a set of tested public health messages that can allow public health workers to speak with one voice to the general public in a radiological emergency. In addition, the development of these messages will foster collaboration among the states and CDC.

Therefore CDC requests approval to test one set of five messages among public health workers using focus group testing and electronic surveys. There are no costs to respondents except their time to participate in the survey.

**ESTIMATED ANNUALIZED BURDEN HOURS**

Respondents	No. of Respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Focus Groups .....	72	1	1.5	108
Electronic Surveys .....	2,022	1	20/60	674
Total .....	.....	.....	.....	782

Dated: March 29, 2007.

**Joan F. Karr,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E7-6337 Filed 4-4-07; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**[30 Day-07-06BG]**

**Agency Forms Undergoing Paperwork Reduction Act Review**

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C.

Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-5960 or send an e-mail to [omb@cdc.gov](mailto: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**

Longitudinal follow-up of Youth with Attention-Deficit/Hyperactivity Disorder identified in Community Settings: Examining Health Status, Correlates, and Effects associated with treatment for

Attention-Deficit/Hyperactivity Disorder—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

This project will collect data from proxy respondents and youths with and without ADHD. This program addresses the Healthy People 2010 focus area of Mental Health and Mental Disorders, and describes the prevalence, incidence, long-term outcomes, treatment(s), select co-morbid conditions, secondary conditions, and health risk behavior of youth with ADHD relative to youth without ADHD.

In FY 2002–FY 2005 two cooperative agreements (transitioned to extramural research) were awarded to conduct community-based epidemiological research on ADHD among elementary-aged youth, known as the Project to Learn about ADHD in Youth (PLAY Study Collaborative). These studies informed community-based prevalence, rates of comorbidity, and rates of health risk behaviors among elementary-age youth with and without ADHD as determined by a rigorous case definition developed by the principal investigators and in collaboration with CDC scientists.

The purpose of this program is to study the long-term outcomes and

health status for children with Attention-Deficit/Hyperactivity Disorder (ADHD) identified and treated in community settings through a systematic follow-up of the subjects who participated in the PLAY Study Collaborative. There is a considerable interest in the long-term outcomes of youth with ADHD as well as the effects of treatment, lack of treatment, and quality of care in average U.S. communities, emphasizing the public health importance of longitudinal research in this area.

There is no cost to respondents other than their time. The total annual burden hours are 3994.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Survey instruments	No. of respondents	No. of responses/ respondent	Avg. burden/ response in hours
Parent .....	ADHD Communication and Knowledge (Attachment B3) .....	961 .....	1	10/60
Parent .....	ADHD Treatment, Cost, and Client Satisfaction Questionnaire (Attachment B4a).	961 .....	1	10/60
Parent .....	ADHD Treatment Quarterly Update (Attachment B4b) .....	961 .....	3	3/60
Parent .....	Brief Impairment Scale (Attachment B5) .....	961 .....	1	4/60
Parent .....	Critical School Events (elementary, middle) (Attachment B6)	823 .....	2	6/60
Parent .....	Critical School Events (high school) (Attachment B7) .....	138 .....	2	6/60
Parent .....	Demographic Survey (Attachment B8) .....	961 .....	1	5/60
Parent .....	Health Risk Behavior Survey (Elementary) 7–10 years (Attachment B9).	163 .....	1	18/60
Parent .....	Health Risk Behavior Survey (Middle School) 11–13 years (Attachment B10).	412 .....	1	22/60
Parent .....	Health Risk Behavior Survey (High School) 14+ years (Attachment B11).	386 .....	1	28/60
Parent .....	Parent-Child Relationship Inventory (Attachment B12) .....	961 .....	1	15/60
Parent .....	Parents' Questionnaire (Mental Health) (Attachment B13) ...	892 .....	1	5/60
Parent .....	Pediatric Quality of Life Young Child (Attachment B14) .....	5 .....	2	4/60
Parent .....	Pediatric Quality of Life Child (Attachment B15) .....	421 .....	2	4/60
Parent .....	Pediatric Quality of Life Teen (Attachment B16) .....	536 .....	2	4/60
Parent .....	Quarterly Update Events and Demographics (Attachment B17).	961 .....	3	1/60
Parent .....	Social Isolation/Support (Attachment B18) .....	892 .....	1	2/60
Parent .....	Strengths and Difficulties Questionnaire 4–10 (Attachment B19).	163 .....	2	3/60
Parent .....	Strengths and Difficulties Questionnaire 11–17 (Attachment B20).	798 .....	2	3/60
Parent .....	Vanderbilt Parent Rating Scale (Attachment B21) .....	961 .....	2	10/60
Child .....	Brief Sensation Seeking Scale (11+ years only) (Attachment B22).	798 .....	1	1/60
Child .....	Health Risk Behavior Survey (Elementary) 7–10 years (Attachment B23).	163 .....	1	25/60
Child .....	Health Risk Behavior Survey (Middle School) 11–13 years (Attachment B24).	412 .....	1	30/60
Child .....	Health Risk Behavior Survey (High School) 14+ years (Attachment B25).	386 .....	1	35/60
Child .....	MARSH—Self Description Questionnaire v I, 7–12 years (Attachment B26).	426 .....	1	15/60
Child .....	MARSH—Self Description Questionnaire v II, 13–15 years (Attachment B27).	398 .....	1	20/60
Child .....	MARSH—Self Description Questionnaire v III 16+ years (Attachment B28).	138 .....	1	20/60
Child .....	Pediatric Quality of Life Young Child (Attachment B29) .....	5 .....	1	5/60
Child .....	Pediatric Quality of Life Child (Attachment B30) .....	421 .....	1	5/60
Child .....	Pediatric Quality of Life Teen (Attachment B31) .....	536 .....	1	5/60
Child .....	People In My Life (Attachment B32) .....	426 .....	1	15/60
Child .....	People In My Life/Inventory of Parent and Peer Attachment (Attachment B33).	536 .....	1	22/60
Child .....	Youth Demographic Survey, 16+ years only (Attachment B34).	138 .....	1	1/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Survey instruments	No. of respondents	No. of responses/ respondent	Avg. burden/ response in hours
Teacher .....	Teacher Survey (Attachment B35) .....	4154 .....	1	10/60
Total .....	.....	961 children ... 892 parents .... 4154 teachers	.....	.....

Dated: March 30, 2007.

**Joan F. Karr,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E7-6339 Filed 4-4-07; 8:45 am]

BILLING CODE 4163-18-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[60 Day-07-07AU]

**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 Joan Karr, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to [omb@cdc.gov](mailto: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**

Survey to Assess Methicillin-Resistant *Staphylococcus aureus* (MRSA) Prevention Programs among Hospitals Participating in CDC MRSA Surveillance Programs—New—National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID) (proposed), Centers for Disease Control and Prevention.

*Background and Brief Description*

In October, 2006, CDC recommended specific strategies to reduce transmission of multi-drug resistant organisms, including MRSA, in U.S. hospitals. Currently detailed data on

ongoing MRSA prevention efforts at hospitals reporting to CDC surveillance systems is unknown. CDC has developed a survey to assess MRSA prevention programs in place at health care facilities reporting MRSA infection data to CDC through established surveillance systems. In this project, infection control practitioners in all 220 hospitals that participate in the MRSA portion of the Active Bacterial Core Surveillance System will surveyed electronically three times. There will be an initial baseline survey and then two follow-up surveys, each a year apart. The surveys will determine if changes in infection control practice correlate with changes in rates of MRSA infections. The proposed survey will provide data that can be used to assess progress toward achieving CDC's Health Protection Goals. The survey will also provide data on facility-based MRSA prevention policies and procedures that may affect MRSA infection rates. These results will inform CDC in the prevention and control of MRSA.

This proposed project supports CDC's Goal of "Healthy People in Healthy Places" and its Strategic Goal to "Increase the number of health care institutions that comply with evidence based guidelines for infection control."

There is no cost to respondents other than their time to complete the survey.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Hospital Infection Control Professionals .....	220	1	15/60	55
Total .....	.....	.....	.....	55

Dated: March 30, 2007.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7-6340 Filed 4-4-07; 8:45 am]

BILLING CODE 4163-18-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[60 Day-07-06AP]

**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 404-639-4766 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to [omb@cdc.gov](mailto: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**

Aerosol Generation by Cough—NEW—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Federal Occupational Safety and Health Act of 1970, section 501, enables NIOSH to carry out research relevant to the health and safety of workers. NIOSH is conducting a two-year study of airborne clouds of particles or droplets called "aerosols". Some diseases like influenza and Severe Acute Respiratory Syndrome (SARS) can be spread when people produce infectious aerosols by coughing or sneezing. Aerosol transmission of infectious diseases is especially important to health-care workers and emergency responders, who face a much greater risk of exposure to these hazards than does the general public. Cough-generated aerosols are of particular concern because coughing is one of the most common symptoms of respiratory infections. However, substantial gaps exist in our understanding about the generation of aerosols during coughing. This lack of information hampers the ability of health scientists to model and predict the generation of infectious aerosols by coughing and to understand whether or not cough-generated aerosols are likely to be an important means of transmission of particular diseases.

The purpose of this study is to gain a better understanding of the production of aerosols by coughing. The results of

this research will give scientists and health professionals greater insight into the airborne transmission of disease and allow them to better assess the potential effectiveness of preventive measures.

The first part of this study will measure the quantity and size distribution of aerosol produced during human coughs. To accomplish this, volunteers will cough into a spirometer, which is a commonly used piston-like medical device that measures the volume of air exhaled by a patient. After the volunteer coughs into the spirometer, the air in the spirometer will be drawn into a commercial aerosol measurement device. These experiments will also provide information on how much cough aerosols vary over time for individuals and how much aerosol generation varies between individuals.

The second part of this study will determine how effectively surgical masks and N95 respirators block cough-generated aerosols. N95 respirators are dust masks that are certified to filter out at least 95% of airborne material during normal breathing. N95 respirators are known to be more effective than surgical masks at filtering out airborne particles during inhalation, but it is not known whether masks or respirators are more effective at blocking cough-generated aerosols. For this work, masks and respirators will be placed in a special holder with a disposable mouthpiece, and human subjects will cough into the mouthpiece and through the mask. The aerosol produced by each subject will be analyzed before and after flowing through the mask. These experiments will determine how effective each mask or respirator is at preventing the release of cough-generated aerosols.

Volunteers from part 1 may also participate in part 2 if they wish. There will be no costs to study participants other than their time.

**ESTIMATE OF ANNUALIZED BURDEN HOURS**

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Part 1 participants .....	20	5	1.5	150
Part 2 participants .....	120	1	1.5	180
Total .....	.....	.....	.....	330

Dated: March 29, 2007.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7-6344 Filed 4-4-07; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### Notice of Hearing: Reconsideration of Disapproval of Minnesota State Plan Amendment 05-10

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice of hearing.

**SUMMARY:** This notice announces an administrative hearing to be held on May 30, 2007, at 233 N. Michigan Avenue, Suite 600, the Indiana Room, Chicago, IL 60601, to reconsider CMS' decision to disapprove Minnesota State plan amendment 05-10.

**CLOSING DATE:** Requests to participate in the hearing as a party must be received by the presiding officer by (15 days after publication).

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scully-Hayes, Presiding Officer, CMS, Lord Baltimore Drive, Mail Stop LB-23-20, Baltimore, Maryland 21244. Telephone: (410) 786-2055.

**SUPPLEMENTARY INFORMATION:** This notice announces an administrative hearing to reconsider CMS' decision to disapprove Minnesota State plan amendment (SPA) 05-10 which was submitted on September 21, 2005. This SPA was disapproved on December 29, 2006.

Under this SPA, the State proposed to revise coverage and reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment services related to children's mental health rehabilitative services and rehabilitative services pursuant to an Individualized Education Plan or Individual Family Service Plan.

The amendment was disapproved because CMS found that the amendment violated the statute for reasons set forth in the disapproval letter.

*The issues to be decided at the hearing are:*

- Whether the per diem (bundled) payment methodologies for mental health rehabilitative services described in Minnesota's SPA 05-10 accurately reflect true costs or reasonable fees for the services included in the bundles;

- Whether the amount or scope of services reimbursed through the bundled rate is sufficiently constant so that the proposed methodologies would be an economic and efficient method of payment;

- Whether all of the component parts of the service are delivered as recommended within the scope of practice of the physician or licensed practitioner of the healing arts;

- Whether the actual practitioners who will be furnishing services can be readily identified; and

- Whether the bundled rates provide for direct payment to the actual practitioners who provide the service.

Section 1116 of the Social Security Act and Federal regulations at 42 CFR part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. CMS is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

#### The Notice to Minnesota Announcing an Administrative Hearing To Reconsider the Disapproval of Its SPA Reads as Follows

Ms. Christine Bronson,  
Medicaid Director,  
Minnesota Department of Human Services,  
P.O. Box 64998,  
St. Paul, MN 55164-0998

Dear Ms. Bronson: I am responding to your request for reconsideration of the decision to disapprove the Minnesota State plan amendment (SPA) 05-10, which was submitted on September 21, 2005, and disapproved on December 29, 2006.

Under this SPA, the State proposed to revise coverage and reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment services related to children's mental health rehabilitative services and rehabilitative services pursuant to an Individualized

Education Plan or Individual Family Service Plan. The Centers for Medicare & Medicaid Services (CMS) disapproved the SPA because the State did not document that its proposed reimbursement methodology meets the conditions specified in sections 1902(a)(10), 1902(a)(30), and 1902(a)(32) of the Social Security Act (the Act).

At issue in this reconsideration is whether Minnesota has demonstrated that the bundled rate methodology proposed in SPA 05-10 is consistent with the requirements of section 1902(a)(30)(A) of the Act, which requires that States have methods and procedures to assure that payments to providers are consistent with efficiency, economy, and quality of care. A second issue is whether the State has shown that the payment methodology is for care and services that are within the scope, and meet the requirements, of section 1902(a)(10)(A) to make available "medical assistance," which is defined at section 1905(a) and implementing requirements. Also at issue is whether the proposed payment methodology complies with the direct payment requirements of section 1902(a)(32) of the Act, which precludes payment to anyone other than the individual, person, or institution providing the care and service (with specified exceptions). We discuss each of these issues in more detail below in relation to SPA 05-10.

Section 1902(a)(30)(A) of the Act requires that States have methods and procedures to assure that payments to providers are consistent with efficiency, economy, and quality of care. The per diem payment methodologies for mental health rehabilitative services described in SPA 05-10 represent bundled payment methodologies under which the State pays a single rate for one or more of a group of different services furnished to an eligible individual during a fixed period of time. The State has failed to demonstrate that its methodologies are in compliance with section 1902(a)(30)(A), in that it has not shown: that these methodologies accurately reflect true costs or reasonable fees for the services included in the bundles; and that the amount or scope of services reimbursed through the bundled rate is sufficiently constant so that the proposed methodologies would be an economic and efficient method of payment.

Section 1902(a)(10)(A) requires that State plans make available medical assistance, which is defined at section 1905(a) and in implementing regulations. For a number of categories of medical assistance, there are provider standards applicable to different types of care and services, and for rehabilitative services there is a requirement that rehabilitative services must be recommended by a physician or other licensed practitioner of the healing arts. Minnesota did not provide evidence of a method to identify that providers of the component parts of the care and services would meet all applicable provider requirements. Nor did Minnesota demonstrate a method to ensure that all of the component parts of the care and services furnished under the bundled payment methodology proposed in SPA 05-10, would

be delivered as recommended within the scope of practice of the physician or licensed practitioner of the healing arts.

Furthermore, the information provided by the State did not demonstrate compliance with section 1902(a)(32) of the Act, requiring direct payment to the provider of care or services. Under the State's bundled payment methodology, the entities which would receive the proposed bundled rates for mental health rehabilitation services are not themselves providers of the service; they are not billing agents for such providers; nor are they recognized types of health care providers under Federal law. The underlying services represent different types of individual services that are furnished by individual practitioners. The State has failed to show that the proposed payment methodology is within one of the statutory exceptions as implemented by Federal regulations at 42 CFR 447.10. Indeed, the State has not shown that, under its proposed payment methodology, the actual practitioners furnishing services can even be readily identified. Thus, the State has not demonstrated that the use of bundled rates will comply with the requirement for direct payment to the actual practitioners who provide care or service.

I am scheduling a hearing on your request for reconsideration to be held on May 30, 2007, at 233 N. Michigan Avenue, Suite 600, the Indiana Room, 5th Floor, Chicago, IL, 60601, to reconsider the decision to disapprove SPA 05-10. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by Federal regulations at 42 CFR Part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer at (410) 786-2055. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing.

Sincerely,

Leslie V. Norwalk, Esq.,  
Acting Administrator.

Section 1116 of the Social Security Act (42 U.S.C. section 1316); (42 CFR section 430.18).

(Catalog of Federal Domestic Assistance program No. 13.714, Medicaid Assistance Program)

Dated: March 30, 2007.

**Leslie V. Norwalk,**  
Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E7-6312 Filed 4-4-07; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-1270-RCN]

RIN 0938-AN14

#### Medicare Program; Competitive Acquisition for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies; Extension of Timeline for Publication of Final Rule

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Extension of timeline for publication of final rule.

**SUMMARY:** This notice announces an extension of the timeline for publication of a Medicare final rule in accordance with section 1871(a)(3)(B) of the Social Security Act, which allows us to extend the timeline for publication of the final rule.

**EFFECTIVE DATE:** This notice is effective on March 30, 2007.

**FURTHER INFORMATION CONTACT:** Ralph Goldberg, (410) 786-4870.

**SUPPLEMENTARY INFORMATION:** In the May 1, 2006 *Federal Register* (71 FR 25654), we published a proposed rule that would have implemented competitive bidding programs for certain covered items of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) throughout the United States in accordance with sections 1847(a) and (b) of the Social Security Act (the Act). These programs would change the way that Medicare pays for these items under Part B of the Medicare program by utilizing bids submitted by DMEPOS suppliers to establish applicable payment amounts.

Section 1871(a)(3)(A) of the Act requires us to establish and publish a regular timeline for the publication of final regulations based on the previous publication of a proposed regulation. In accordance with section 1871(a)(3)(B) of the Act, the timeline may vary among different regulations based on differences in the complexity of the regulation, the number and scope of comments received, and other relevant factors, but may not be longer than 3 years except under exceptional circumstances. In addition, in accordance with section 1871(a)(3)(B) of the Act, the Secretary may extend the initial targeted publication date of the final regulation, if the Secretary, no later than the regulation's previously established proposed publication date, causes to have published a notice with the new target date, and such notice

includes a brief explanation of the justification for the variation.

We announced in the December 2006 Unified Agenda (December 11, 2006, 71 FR 72734) that we would issue the final rule in March 2007. However, we are not able to meet the announced publication target date due to the number of extensive comments received on the proposed rule and interagency coordination. We received over 2,000 timely comments on the proposed rule. The commenters presented extremely complex policy and legal issues, which require extensive consultation and analysis.

This final rule also is extremely complex because it will establish an entirely new program that will affect the DMEPOS industry as well as Medicare beneficiaries who use DMEPOS. This final rule will establish a new concept for Medicare payment for DMEPOS, which necessitates the development of new regulations and a competitive bidding process in addition to extensive payment system changes.

This notice extends the timeline for publication of the final rule until April 30, 2007.

**Authority:** Section 1871 of the Social Security Act (42 U.S.C. 201395hh). (Catalog of Federal Domestic Assistance Program No. 093.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 30, 2007.

**Ann Agnew,**

*Executive Secretary to the Department.*

[FR Doc. 07-1658 Filed 3-30-07; 4:01 pm]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### Public Education Study on Public Knowledge of Abstinence and Abstinence Education

*OMB No.:* New Collection.

*Description:* In support of the goal to prevent unwed childbearing, pregnancy, and sexually transmitted diseases, Congress has recently authorized funding increases to support abstinence education.

To learn more about the public's views, the Administration for Children and Families (ACF) will conduct a public opinion survey of a nationally representative sample of adolescents (age 12 to 18) and their parents to examine current attitudes on abstinence and knowledge of abstinence education. The survey data will be used to inform current and future public education

campaigns. In addition, the information gathered will assist ACF with grant administration and technical assistance activities. The survey will ask parents (one parent per adolescent) and adolescents about their views and

attitudes about abstinence until marriage, awareness of abstinence education, and views and attitudes about abstinence education. Each parent and adolescent interview will take approximately 20 minutes to complete.

*Respondents:* A nationally representative sample of adolescents will be selected through a random-digital sample of households with landline telephones.

**Annual Burden Estimates**

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Telephone interview .....	2,000 (1,000 adolescent/parent pairs).	1	0.33	660

*Total annual burden estimates:* 660.

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address:* [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov).

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. *Written comments and recommendations for the proposed information collection should be sent directly to the following:* Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202-395-6974, *Attn:* Desk Officer for the

Administration for Children and Families.

Dated: April 2, 2007.

**Robert Sargis,**  
*Reports Clearance Officer.*  
 [FR Doc. 07-1673 Filed 4-4-07; 8:45 am]  
**BILLING CODE 4184-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Submission for OMB Review; Comment Request**

*Title:* Tribal Child Support Enforcement Direct Funding Request and Reports.

*OMB No.* 0970-0218.

*Description:* The final rule within 45 CFR part 309, published in the **Federal Register** on March 30, 2004, contains a regulatory reporting requirement that, in order to receive funding for a Tribal IV-

D program a Tribe or Tribal organization must submit a plan describing how the Tribe or Tribal organization meets or plans to meet the objectives of section 455(f) of the Social Security Act, including establishing paternity, establishing, modifying, and enforcing support orders, and locating noncustodial parents. The plan is required for all Tribes requesting funding; however, once a Tribe has met the requirements to operate a comprehensive program, a new plan is not required annually unless a Tribe makes changes to its title IV-D program. Tribes and Tribal organizations must respond if they wish to operate a fully funded program. In addition, any Tribe or Tribal organization participating in the program will be required to submit form OCSE 34A. This paperwork collection activity is set to expire in April, 2007.

*Respondents:* Tribes and Tribal Organizations.

**Annual Burden Estimates**

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
45 CFR 309—Plan .....	33	1	480	15,840
Form OCSE 34 A .....	49	4	8	1,568

*Estimated Total Annual Burden Hours:*

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the

information collection. *E-mail address:* [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov).

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should

be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202-395-6974, *Attn:* Desk Officer for the Administration for Children and Families.

Dated: April 2, 2007.

**Robert Sargis,**  
*Reports Clearance Officer.*  
 [FR Doc. 07-1674 Filed 4-4-07; 8:45 am]  
**BILLING CODE 4184-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Proposed Information Collection Activity; Comment Request Proposed Project**

*Title:* National Extranet Optimized Runaway and Homeless Youth Management Information System (NEO-RHYMIS).

*OMB No.:* 0970-0123.

*Description:* The Runaway and Homeless Youth Act, as amended by Public Law 106-71 (42 U.S.C. 5701 *et seq.*) mandates that the Department of Health and Human Services (HHS) report regularly to Congress on the status of HHS-funded programs serving runaway and homeless youth. Such reporting is similarly mandated by the Government Performance and Results Act. Organizations funded under the Runaway and Homeless Youth program are required by statute (42 U.S.C. 5712, 42 U.S.C. 5714-2) to meet certain data collection and reporting requirements.

These requirements include maintenance of client statistical records on the number and the characteristics of the runaway and homeless youth, and youth at risk of family separation, who participate in the project, and the services provided to such youth by the project.

*Respondents:* Public and private, community-based nonprofit and faith-based organizations receiving HHS funds for services to runaway and homeless youth.

**Annual Burden Estimates**

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Youth Profile .....	536	153	.25	20,502
Street Outreach Report .....	141	4211	.02	11,875
Brief Contacts .....	536	305	.15	24,522
Turnaways .....	536	13	.1	697
Data Transfer .....	536	2	.5	536

*Estimated Total Annual Burden Hours:* 58,132.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. *E-mail address:* [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov). All requests should be identified by the title of the information collection.

The Department specifically requests comments 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)

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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 4, 2007.

**Robert Sargis,**  
*Reports Clearance Officer.*  
[FR Doc. 07-1675 Filed 4-4-07; 8:45 am]

**BILLING CODE 4184-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Proposed Information Collection Activity; Comment Request Proposed Projects**

*Title:* Performance Progress Report (PPR).

*OMB No.:* New Collection.

*Description:* This report will be used to establish a uniform format for reporting performance on grants and cooperative agreements issued by the Administration for Children and Families (ACF) and its partners. In addition to allowing for uniformity of information collection, this report will support systematic electronic collection and submission of information. This report will provide interim and final performance progress information as required by OMB Circulars A-102 and A-110. Also, the PPR will allow for the measurement of performance, implement Public Law 106-107, and the President's Management Agenda.

The PPR consists of a cover page and six optional forms. The cover page contains identifying data elements and a section for a performance narrative. Use of the cover page is mandatory, and programs may simply require their respondents to submit this page and attach a performance narrative, or, programs may require the cover page and one or more of the six optional forms.

*Respondents:* ACF and ACF Partner Grantees.

**ANNUAL BURDEN ESTIMATES**

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Performance Progress Report (SF-PPR) .....	16,864	1	.416666	7,027
Performance Measures (SF-PPR-A) .....	755	1	.75	566
Program Indicators (SF-PPR-B) .....	3,075	1	.166666	512
Benchmark Evaluations (SF-PPR-C) .....	249	1	1.50	374
Table of Activity Results (SF-PPR-D) .....	3,019	1	.75	2,264
Activity Based Expenditures (SF-PPR-E) .....	2,779	1	.333333	926

## ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Program/Project Management (SF-PPR-F) .....	37	1	.50	19

*Estimated Total Annual Burden Hours: 11,688.*

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. *E-mail address:* [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov). All requests should be identified by the title of the information collection.

*The Department specifically requests comments 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) 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. consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 2, 2007.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 07-1676 Filed 4-4-07; 8:45 am]

BILLING CODE 4184-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### Advisory Committee for Pharmaceutical Science and Clinical Pharmacology (formerly called Advisory Committee for Pharmaceutical Science); Notice of Meeting; Cancellation

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

**ACTION:** Notice.

**SUMMARY:** The meeting of the Advisory Committee for Pharmaceutical Science and Clinical Pharmacology scheduled for May 1 and 2, 2007, is cancelled. This meeting was announced in the **Federal Register** of March 16, 2007 (72 FR 12621).

**FOR FURTHER INFORMATION CONTACT:** Victoria Ferretti-Aceto, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301-827-7001, FAX: 301-827-6776, e-mail: [Victoria.ferrettiaceto@fda.hhs.gov](mailto:Victoria.ferrettiaceto@fda.hhs.gov), or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 3014512539. Please call the Information Line for up-to-date information on this meeting.

Dated: March 29, 2007.

**Randall W. Lutter,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E7-6283 Filed 4-4-07; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### Manufacturing Subcommittee of the Advisory Committee for Pharmaceutical Science and Clinical Pharmacology (formerly called Advisory Committee for Pharmaceutical Science); Notice of Meeting; Cancellation

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

**ACTION:** Notice.

**SUMMARY:** The meeting of the Manufacturing Subcommittee of the Advisory Committee for Pharmaceutical Science and Clinical Pharmacology scheduled for April 30, 2007, is cancelled. This meeting was announced in the **Federal Register** of March 5, 2007 (72 FR 9767).

#### FOR FURTHER INFORMATION CONTACT:

Victoria Ferretti-Aceto, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301-827-7001, FAX: 301-827-6776, e-mail: [victoria.ferrettiaceto@fda.hhs.gov](mailto:victoria.ferrettiaceto@fda.hhs.gov), or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 3014512539. Please call the Information Line for up-to-date information on this meeting.

Dated: March 29, 2007.

**Randall W. Lutter,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E7-6288 Filed 4-4-07; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Notice of Meeting of the Advisory Committee on Organ Transplantation

**AGENCY:** Health Resources and Services Administration, HHS.

**SUMMARY:** Pursuant to Public Law 92-463, the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the twelfth meeting of the Advisory Committee on Organ Transplantation (ACOT), Department of Health and Human Services (HHS). The meeting will be held from approximately 9 a.m. to 5:30 p.m. on May 15, 2007, and from 9 a.m. to 3 p.m. on May 16, 2007, at the DoubleTree Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852. The meeting will be open to the public; however, seating is limited

and pre-registration is encouraged (see below).

**SUPPLEMENTARY INFORMATION:** Under the authority of 42 U.S.C. Section 217a, Section 222 of the Public Health Service Act, as amended, and 42 CFR 121.12 (2000), ACOT was established to assist the Secretary in enhancing organ donation, ensuring that the system of organ transplantation is grounded in the best available medical science, and assuring the public that the system is as effective and equitable as possible, and, thereby, increasing public confidence in the integrity and effectiveness of the transplantation system. ACOT is composed of up to 25 members, including the Chair. Members are serving as Special Government Employees and have diverse backgrounds in fields such as organ donation, health care public policy, transplantation medicine and surgery, critical care medicine and other medical specialties involved in the identification and referral of donors, non-physician transplant professions, nursing, epidemiology, immunology, law and bioethics, behavioral sciences, economics and statistics, as well as representatives of transplant candidates, transplant recipients, organ donors, and family members.

ACOT will hear presentations on paired exchanges; the activities of the Scientific Registry of Transplant Recipients; a transplantation cost-benefit study; transplant tourism; end-of-life care and donation after cardiac death (DCD) recovery; and a kidney application policy that is under development.

The draft meeting agenda will be available on May 1 on the Department's donation Web site at <http://www.organdonor.gov/acot.html>.

A registration form will be available on April 15 on the Department's donation Web site at <http://www.organdonor.gov/acot.html>. The completed registration form should be submitted by facsimile to Professional and Scientific Associates (PSA), the logistical support contractor for the meeting, at fax number (703) 234-1701. Registration can also be completed electronically at <http://www.psava.com/dot/acot2007/>. Individuals without access to the Internet who wish to register may call Sowjanya Kotakonda with PSA at (703) 234-1737. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the ACOT Executive Secretary, Remy Aronoff, in advance of the meeting. Mr. Aronoff may be reached by

telephone at 301-443-3264, e-mail: [Remy.Aronoff@hrsa.hhs.gov](mailto:Remy.Aronoff@hrsa.hhs.gov) or in writing at the address provided below. Management and support services for ACOT functions are provided by the Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, Room 12C-06, Rockville, Maryland 20857; telephone number 301-443-7577.

After the presentations and ACOT discussions, members of the public will have an opportunity to provide comments. Because of the Committee's full agenda and the timeframe in which to cover the agenda topics, public comment will be limited. All public comments will be included in the record of the ACOT meeting.

Dated: March 29, 2007.

**Elizabeth M. Duke,**  
Administrator.

[FR Doc. E7-6365 Filed 4-4-07; 8:45 am]

**BILLING CODE 4165-15-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given of the following meeting:

*Name:* Advisory Committee on Training in Primary Care Medicine and Dentistry.

*Date and Time:* May 17, 2007, 8:30 a.m.–4:30 p.m. and May 18, 2007, 8:00 a.m.–2:00 p.m.,

*Place:* Hilton Washington, DC/Rockville Executive Meeting Center, 1750 Rockville Pike, Rockville, Maryland 20852.

*Status:* The meeting will be open to the public.

*Purpose:* The Advisory Committee provides advice and recommendations on a broad range of issues dealing with programs and activities authorized under section 747 of the Public Health Service Act as amended by The Health Professions Education Partnership Act of 1998, Public Law 105-392. At this meeting the Advisory Committee will begin work on its seventh report which will be submitted to Congress and to the Secretary of the Department of Health and Human Services.

*Agenda:* The meeting on Thursday, May 17 will begin with opening comments from the Chair of the Advisory Committee and introductory remarks from senior management of the Health Resources and Services Administration. A plenary session will follow in which the Advisory Committee will select a topic for its seventh report and develop a plan for completion of the report.

In both small groups and in the plenary session, the Advisory Committee will determine recommendations for the report. An opportunity will be provided for public comment.

On Friday, May 18 the Advisory Committee will continue work on the seventh report. The Advisory Committee will plan next steps in the report preparation process. An opportunity will be provided for public comment.

*For Further Information Contact:* Anyone interested in obtaining a roster of members or other relevant information should write or contact Jerilyn K. Glass, M.D., Ph.D., Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Room 9A-27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6785. The Web address for information on the Advisory Committee is <http://bhpr.hrsa.gov/medicine-dentistry/actpcmd>.

Dated: March 27, 2007.

**Alexandra Huttinger,**

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7-6368 Filed 4-4-07; 8:45 am]

**BILLING CODE 4165-15-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Notice of Availability of Draft Policy Document for Comment

**AGENCY:** Health Resources and Services Administration (HRSA), HHS.

**ACTION:** This is a Notice of Availability and request for comments on a draft Agency Guidance ("Policy Information Notice" (PIN)) to clarify the scope of Federal Torts Claims Act (FTCA) coverage for FTCA-deemed Health Center Program grantees during an emergency. The PIN, "Federal Tort Claims Act Coverage for Health Center Program Grantees Responding to Emergencies" ("FTCA PIN") is available on the Internet at <http://bphc.hrsa.gov>.

**DATES:** Comments must be received by May 31, 2007.

**ADDRESSES:** Please send your comments to the following e-mail address: [DPDgeneral@hrsa.gov](mailto:DPDgeneral@hrsa.gov).

**SUMMARY:** HRSA believes that community input is valuable to the development of policies and policy documents related to the implementation of primary health care programs, including the Health Center Program. Therefore, we are requesting comments on the PIN referenced above. After review and consideration of all comments received, the PIN may be amended to incorporate certain

recommendations from the public. Once the PIN is finalized, it will be made available on HRSA's Web site, along with the Agency's "Response to Public Comments." That document will summarize the major comments received and describe the Agency's response, including any corresponding changes made to the PIN. Where comments do not result in a revision to the PIN, explanations will be provided.

### Background

HRSA administers the Health Center Program, which supports more than 3,800 health care delivery sites, including community health centers, migrant health centers, health care for the homeless centers, and public housing primary care centers. Health centers serve clients that are primarily low-income and minorities, and deliver preventive and primary care services to patients regardless of their ability to pay. Charges for health care services are set according to income.

FTCA medical malpractice coverage for Health Center Program grantees was initially legislated through the Federally Supported Health Centers Assistance Act (FSHCAA) of 1992. The FSHCAA of 1995 clarified the 1992 Act and eliminated its sunset provision, making the program permanent. FSHCAA authorizes Health Center Program grantees (and their officers, directors, employees, and certain contractors) to be deemed as Federal employees for the purpose of medical malpractice protection. As Federal employees, these organizations and individuals are immune from medical malpractice suits for actions within the scope of their project and employment. In the event that a medical malpractice lawsuit is filed against a deemed entity or covered physician acting within the scope of his/her employment in grant-related activities, the United States is substituted for the deemed entity and the covered employee.

HRSA recognizes that, during an emergency, FTCA-deemed health centers are likely to participate in medical response efforts. HRSA has received numerous requests for clarification regarding the scope of FTCA coverage during emergencies. The purpose of the FTCA PIN is to respond to these requests for clarification and to address frequently asked FTCA questions.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding this notice, please contact Shannon Dunne Falten at 301-594-4060.

Dated: March 29, 2007.

**Elizabeth M. Duke,**

*Administrator.*

[FR Doc. E7-6366 Filed 4-4-07; 8:45 am]

**BILLING CODE 4165-15-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Cancer 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 Cancer Institute Special Emphasis Panel; Molecular Oncology P01 Special Emphasis Panel.

*Date:* June 4-5, 2007.

*Time:* 8 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Bethesda North Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

*Contact Person:* Michael B. Small, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8127, Bethesda, MD 20892-8328, 301-402-0996, [smallm@mail.nih.gov](mailto:smallm@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Cellular and Tissue Biology (SEP).

*Date:* June 4-5, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Bethesda North Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

*Contact Person:* Shakeel Ahmad, PhD, Scientific Review Administrator, Research Projects Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8137, MSC 8328, Bethesda, MD 20892, (301) 594-0114, [ahmads@mail.nih.gov](mailto:ahmads@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Prevention, Control and Population Science.

*Date:* June 7, 2007.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Bethesda North Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

*Contact Person:* Wlodek Lopaczynski, MD, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd. Room 8131, Bethesda, MD 20892, 301-593-1402, [lopacw@mail.nih.gov](mailto:lopacw@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 27, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-1694 Filed 4-4-07; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Cancer 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 Cancer Institute Initial Review Group; Subcommittee A—Cancer Centers.

*Date:* April 24, 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:* Gail J. Bryant, MD., Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8107, MSC 8328, Bethesda, MD 20892-8328, (301) 402-0801, [gb30t@nih.gov](mailto:gb30t@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 27, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-1695 Filed 4-4-07; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Center for Complementary and Alternative Medicine; Notice of Meeting**

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM) meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of 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/or contract proposals and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council for Complementary and Alternative Medicine.

*Date:* June 1, 2007.

*Closed:* 8 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Open:* 1 p.m. to 4:30 p.m.

*Agenda:* Opening remarks by the Acting Director of National Center for Complementary and Alternative Medicine, presentation of a new research initiative, and other business of the Council.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

*Contact Person:* Martin H. Goldrosen, PhD, Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 594-2014.

The public comments session is scheduled from 4 to 4:30 p.m., but could change depending on the actual time spent on each agenda item. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Martin H. Goldrosen, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301-594-2014, Fax: 301-480-9970. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m. on May 30, 2007. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Martin H. Goldrosen at the address listed above up to ten calendar days (June 11, 2007) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by contacting Dr. Martin H. Goldrosen, Executive Secretary, NACCAM, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301-594-2014, Fax 301-480-9970, or via e-mail at [naccames@mail.nih.gov](mailto:naccames@mail.nih.gov).

In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernment employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the secretary desk upon entering the building.

Dated: March 28, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-1691 Filed 4-4-07; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Heart, Lung, and Blood Institute; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Childhood Asthma Managed Program—Cooperative Agreements.

*Date:* May 3, 2007.

*Time:* 12 p.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Blaine B. Moore, PhD, Health Scientist Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892, 301-435-0050, [mooreb@nhlbi.nih.gov](mailto:mooreb@nhlbi.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 30, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-1681 Filed 4-4-07; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Heart, Lung, and Blood Institute; Notice of Closed 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Bioengineering Approaches to Energy Balance and Obesity Review.

*Date:* May 18, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Brookshire Suites, 120 East Lombard Street, Baltimore, MD 21202.

*Contact Person:* Charles Joyce, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892-7924, 301-435-0288, [cjoyce@nhlbi.nih.gov](mailto:cjoyce@nhlbi.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 29, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-1688 Filed 4-4-07; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; Notice of Closed 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 Allergy and Infectious Diseases Special Emphasis Panel; Microbicide Innovation Program (MIP II).

*Date:* April 25-26, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington DC/Rockville, 1750 Rockville Pike, Madison Room, Rockville, MD 20852.

*Contact Person:* Roberta Binder, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural

Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Room 3130, Bethesda, MD 20892-7617, 301-496-7966, [rbinder@niaid.nih.gov](mailto:rbinder@niaid.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 28, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-1679 Filed 4-4-07; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel, Predoctoral Training at the Interface of the Behavioral and Biomedical Sciences.

*Date:* April 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:* Meredith D. Temple-O'Connor, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12C, Bethesda, MD 20892, 301-594-2772, [templeocm@mail.nih.gov](mailto:templeocm@mail.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research

Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 30, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-1680 Filed 4-4-07; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; Notice of Closed 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 Allergy and Infectious Diseases Special Emphasis Panel; Loan Repayment Program—Meeting 2.

*Date:* May 3-4, 2007.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Ellen S. Buczko, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-451-2676, [ebuczko1@niaid.nih.gov](mailto:ebuczko1@niaid.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 30, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-1682 Filed 4-4-07; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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 Advisory Mental Health Council.

*Date:* May 10–11, 2007.

*Closed:* May 10, 2007, 10:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Rooms C/D/E, Rockville, MD 20852.

*Open:* May 11, 2007, 8:30 a.m. to 1 p.m.

*Agenda:* Presentation of NIMH Director's report and discussion on NIMH program and policy issues.

*Place:* National Institutes of Health, Building 31C, 31 Center Drive, 6th Floor, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* Jane A. Steinberg, PhD, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–5047.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed

and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://www.nimh.nih.gov/council/advis.cfm>, where an agenda and any additional information for the meeting will be posted when available.

(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: March 29, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–1683 Filed 4–4–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* National Advisory Board on Medical Rehabilitation Research.

*Date:* May 3–4, 2007.

*Time:* May 3, 2007, 8:30 a.m. to 5 p.m.

*Agenda:* NICHD Director's Report presentation, NCMRR Director's Report presentation and various reports on Medical Research Initiatives.

*Place:* William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

*Time:* May 4, 2007, 9 a.m. to 12 p.m.

*Agenda:* Other business dealing with the NABMRR Board.

*Place:* William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

*Contact Person:* Ralph M. Nitkin, PhD, Director, BSCD, National Center for Medical, Rehabilitation Research, National Institute of Child Health and Human Development, NIH, 6100 Building, Room 2A03, Bethesda, MD 20892, (301) 402–4206.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <http://www.nichd.nih.gov/about/ncmr.htm>, where an agenda and any additional information for the meeting will be posted when available (Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 29, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–1686 Filed 4–4–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel; Minority Biomedical Research Support.

*Date:* April 16, 2007.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN-12, Bethesda, MD 20892.

*Contact Person:* Helen R. Sunshine, PhD, Chief, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN12F, Bethesda, MD 20892, 301-594-2881, [sunshinh@nigms.nih.gov](mailto:sunshinh@nigms.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 29, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-1687 Filed 4-4-07; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute on Deafness and Other Communication Disorders; Notice of Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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 Deafness and Other Communication Disorders Advisory Council.

*Date:* May 18, 2007.

*Closed:* 8:30 a.m. to 10:45 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892. 10:45 a.m. to 2:30 p.m.

*Open:* 10:45 a.m. to 2:30 p.m.

*Agenda:* Staff reports on divisional, programmatic, and special activities.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Craig A. Jordan, PhD, Director, Division of Extramural Activities, NIDCD, NIH, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892-7180, 301-496-8693, [jordanc@nidcd.nih.gov](mailto:jordanc@nidcd.nih.gov).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://www.nidcd.nih.gov/about/groups/ndcdac/>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: March 29, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-1690 Filed 4-4-07; 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:* April 30-May 1, 2007.

*Time:* 5 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Jurys Washington Hotel, 1500 New Hampshire Ave., 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](mailto: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: March 27, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-1692 Filed 4-4-07; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special

Emphasis Panel; P01 Molecular Genetics Review.

*Date:* April 11–12, 2007.

*Time:* 2 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* William C. Benzing, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892, (301) 496–0660, [benzingw@mail.nih.gov](mailto:benzingw@mail.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Pathogenesis and Treatment of Muscular Dystrophies.

*Date:* April 16, 2007.

*Time:* 2:30 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–4056.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 27, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–1693 Filed 4–4–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed 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:* Center for Scientific Review Special Emphasis Panel, Fellowship: Cell Biology.

*Date:* April 10, 2007.

*Time:* 12 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Jonathan Arias, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, [ariasj@csr.nih.gov](mailto:ariasj@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 29, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–1684 Filed 4–4–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; NFkB and Gene Expression.

*Date:* April 13, 2007.

*Time:* 12 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Alessandra M. Bini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–435–1024, [binia@csr.nih.gov](mailto:binia@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Surgery, Anesthesiology and Trauma Study Section.

*Date:* May 30–31, 2007.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

*Contact Person:* Weihua Luo, PhD, MD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, 301–435–1170, [luow@csr.nih.gov](mailto:luow@csr.nih.gov).

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function A Study Section.

*Date:* June 4–5, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* George Washington University Inn, 824 New Hampshire Ave., NW., Washington, DC 20037.

*Contact Person:* David R. Jollie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301) 435–1722, [jollieda@csr.nih.gov](mailto:jollieda@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 29, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–1685 Filed 4–4–07; 8:45 am]

**BILLING CODE 4140–01–M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****Center for Scientific Review; Notice of Closed 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 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 properly 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:* Respiratory Sciences Integrated Review Group; Lung Injury, Repair, and Remodeling Study Section.

*Date:* June 4–5, 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:* Ghenima Dirami, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2159A, MSC 7818, Bethesda, MD 20892, 301–594–1321, [diramig@csr.nih.gov](mailto:diramig@csr.nih.gov).

*Name of Committee:* Brain Disorders and Clinical Neuroscience Integrated Review Group, Anterior Eye Disease Study Section.

*Date:* June 4–5, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20037.

*Contact Person:* Jerry L. Taylor, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, 301–435–1175, [taylorje@csr.nih.gov](mailto:taylorje@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Molecular Structure and Function of Enzymes.

*Date:* June 4–5, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Nitsa Rosenzweig, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892, 301–435–1747, [rosenzweign@csr.nih.gov](mailto:rosenzweign@csr.nih.gov).

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience

Integrated Review Group, Cognitive Neuroscience Study Section.

*Date:* June 5–6, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Michael A. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, 301–435–1247, [steinmem@csr.nih.gov](mailto:steinmem@csr.nih.gov).

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Molecular Neuropharmacology and Signaling Study Section.

*Date:* June 5–6, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20032.

*Contact Person:* Carole L. Jelsema, PhD, Chief and Scientific Review Administrator, MDCH IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7850, Bethesda, MD 20892, (301) 435–1248, [jelsemac@csr.nih.gov](mailto:jelsemac@csr.nih.gov).

*Name of Committee:* Respiratory Sciences Integrated Review Group; Respiratory Integrative Biology and Translational Research Study Section.

*Date:* June 6–7, 2007.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Everett E. Sinnott, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, [sinnott@nih.gov](mailto:sinnott@nih.gov).

*Name of Committee:* Hematology Integrated Review Group, Hematopoiesis Study Section.

*Date:* June 7–8, 2007.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Georgetown, 2101 Wisconsin Ave., NW., Washington, DC 20007.

*Contact Person:* Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195, [sur@csr.nih.gov](mailto:sur@csr.nih.gov).

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Synapses, Cytoskeleton and Trafficking Study Section.

*Date:* June 7–8, 2007.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn National Airport, 2650 Jefferson Davis Highway, Crystal City, VA 22202.

*Contact Person:* Jonathan K. Ivins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040A, MSC 7806, Bethesda, MD 20892, (301) 594–1245, [ivinsj@csr.nih.gov](mailto:ivinsj@csr.nih.gov).

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function B Study Section.

*Date:* June 7–8, 2007.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

*Contact Person:* Nancy Lamontagne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, [lamontan@csr.nih.gov](mailto:lamontan@csr.nih.gov).

*Name of Committee:* Infectious Diseases and Microbiology Integrated Review Group; Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section.

*Date:* June 7–8, 2007.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Carlyle Suites, 1731 New Hampshire Avenue, NW., Washington, DC 20009.

*Contact Person:* Tera Bounds, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7808, Bethesda, MD 20892, 301–435–2306, [boundst@csr.nih.gov](mailto:boundst@csr.nih.gov).

*Name of Committee:* Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Risk and Disease Prevention Study Section.

*Date:* June 7–8, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

*Contact Person:* Martha Faraday, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, 301–435–3575, [faradaym@csr.nih.gov](mailto:faradaym@csr.nih.gov).

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function C Study Section.

*Date:* June 7–8, 2007.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Rouge, 1315 16th Street, NW., Washington, DC 20036.

*Contact Person:* Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7824, Bethesda, MD 20892, (301) 435–1153, [revzina@csr.nih.gov](mailto:revzina@csr.nih.gov).

*Name of Committee:* Cell Biology Integrated Review Group; Cell Structure and Function Study Section.

*Date:* June 7–8, 2007.

*Time:* 8 a.m. to 5:30 p.m.  
*Agenda:* To review and evaluate grant applications.

*Place:* Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

*Contact Person:* Alexandra M. Ainsztein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, 301-451-3848, [ainsztea@csr.nih.gov](mailto:ainsztea@csr.nih.gov).

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Synthetic and Biological Chemistry—a Study Section.

*Date:* June 7–8, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20032.

*Contact Person:* Kathryn M. Koeller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301-435-2681, [koellerk@csr.nih.gov](mailto:koellerk@csr.nih.gov).

*Name of Committee:* Health of the Population Integrated Review Group; Community-Level Health Promotion Study Section.

*Date:* June 7–8, 2007.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

*Contact Person:* William N. Elwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3162, MSC 7770, Bethesda, MD 20892, 301-435-1503, [elwoodwi@csr.nih.gov](mailto:elwoodwi@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 29, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-1689 Filed 4-4-07; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Notice of a Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) Advisory Committee for Women's Service on April 24, 2007.

The meeting is open to the public and will include a presentation on SAMHSA's Children and Families activities; and discussions on SAMHSA's policy issues and programs relating to women.

Attendance by the public will be limited to the space available. Public comments are welcome. Please communicate with the Committee's Executive Secretary, Ms. Carol Watkins (see contact information below) to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members will be available as soon as possible after the meeting, either by accessing the SAMHSA Committee's Web site, <https://www.nac.samhsa.gov>, or by contacting Ms. Watkins. The transcript for the meeting will also be available on the SAMHSA Committee's Web site within three weeks after the meeting.

*Committee Name:* SAMHSA Advisory Committee for Women's Service.

*Date/Time/Type:* Tuesday, April 24, 2007, from 9 a.m. to 12 noon: Open.

*Place:* Hyatt Regency Hotel, 100 Heron Boulevard, Cambridge, Maryland 21613.

*Contact:* Carol Watkins, Executive Secretary, SAMHSA Advisory Committee for Women's Services, 1 Choke Cherry Road, Room 8-1002, Rockville, Maryland 20857, Telephone: (240) 276-2254; Fax: (240) 276-1024 and e-mail: [carol.watkin2@samhsa.hhs.gov](mailto:carol.watkin2@samhsa.hhs.gov).

Dated: March 30, 2007.

**Toian Vaughn,**

*SAMHSA Committee Management Officer*  
 [FR Doc. 07-1671 Filed 4-4-07; 8:45 am]

**BILLING CODE 4162-20-M**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[USCG-2007-27771]

#### Merchant Marine Personnel Advisory Committee

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of Open Teleconference Meeting.

**SUMMARY:** This notice announces a teleconference of the Merchant Marine Personnel Advisory Committee (MERPAC). The purpose of the teleconference is for MERPAC to discuss and prepare recommendations for the Coast Guard concerning its supplemental notice of proposed rulemaking (SNPRM) on the consolidation of merchant mariner

qualification credentials [USCG-2006-24371]. MERPAC provides advice and makes recommendations to the Coast Guard on matters related to the training, qualification, licensing, certification, and fitness of seamen serving in the U.S. merchant marine.

**DATES:** The teleconference call will take place on Monday, April 30th, from 12 p.m. until 2 p.m., EST.

**ADDRESSES:** Members of the public may participate by dialing 1-866-456-0016 (Persons using international connections should dial 1-720-348-6543). You will then be prompted to dial your conference number, which is \*4632491\*. Please ensure that you enter the \* marks. Public participation is welcomed; however, the number of teleconference lines is limited, and lines are available first-come, first-served. Members of the public may also participate by coming to Room 6303, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001. We request that members of the public who plan to attend this meeting notify Mr. Mark Gould at 202-372-1409 so that he may notify building security officials. You may also gain access to this docket at <http://dms.dot.gov/search/searchFormSimple.cfm>.

**FOR FURTHER INFORMATION CONTACT:**

Captain Lorne Thomas, Executive Director of MERPAC, or Mr. Gould, Assistant to the Executive Director, telephone 202-372-1409, fax 202-372-1426.

**SUPPLEMENTARY INFORMATION:** The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register** [5 U.S.C. App. 2]. MERPAC is chartered under that Act. It provides advice and makes recommendations to the Assistant Commandant for Operations, on issues concerning merchant marine personnel such as implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, and developing standards of competency for ship's security officers.

**Tentative Agenda:**

*Monday, April 30th, 2007.*

*12 p.m.-12:05 p.m.* Welcome and Opening Remarks—MERPAC Chairman Captain Andrew McGovern.

*12:05 p.m.-12:45 p.m.* Open discussion on the docket of the Coast Guard's SNPRM concerning the consolidation of merchant mariner qualification credentials [USCG-2006-24371].

12:45 p.m.–1 p.m. Public comment period.

1 p.m.–2 p.m. MERPAC vote on recommendations for the Coast Guard.  
2 p.m. Adjourn.

This tentative agenda is subject to change and the meeting may adjourn early if all committee business has been completed.

#### Public Participation

The Chairman of MERPAC is empowered to conduct the teleconference in a way that will, in his judgment, facilitate the orderly conduct of business. During its teleconference, the committee welcomes public comment. The committee will make every effort to hear the views of all interested parties, including the public. Written comments may be submitted to CAPT Lorne Thomas, Executive Director, MERPAC, Commandant (CG–3PSO), 2100 Second Street, SW., Washington DC 20593–0001.

#### Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Gould as soon as possible.

Dated: March 30, 2007.

**J. G. Lantz,**

*Director of National and International Standards, Assistant Commandant for Prevention.*

[FR Doc. E7–6294 Filed 4–4–07; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[USCG–2007–27752]

#### Towing Safety Advisory Committee

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of meetings.

**SUMMARY:** The Towing Safety Advisory Committee (TSAC) and its working groups will meet as required to discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. All meetings will be open to the public.

**DATES:** The working groups will meet on Tuesday, April 24, from 9 a.m. to 5 p.m. TSAC will meet on, Wednesday, April 25, from 8 a.m. to 3 p.m. These meetings may close early if all business is finished. Written material for and requests to make oral presentations at the meetings should reach the Coast Guard on or before April 13, 2007.

Requests to have a copy of your material distributed to each member of the Committee or working groups prior to the meetings should reach the Coast Guard on or before April 13, 2007.

**ADDRESSES:** TSAC will meet in the Newberry Auditorium of the Calhoon MEBA Engineering School; 27050 Saint Michaels Road; Easton, MD 21601. Accommodations for the public are available in the nearby town of Easton, MD. Visit the school's Web site at <http://www.mebaschool.org/> for maps and directions. Send written material and requests to make oral presentations to the Committee's Assistant Executive Director in the **FOR FURTHER INFORMATION CONTACT** section below. This notice and related documents are available on the Internet at <http://dms.dot.gov> under the docket number USCG–2007–27752.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gerald P. Mianta, Assistant Executive Director, TSAC; U.S. Coast Guard Headquarters, CG–3PSO–1, Room 1210; 2100 Second Street SW., Washington, DC 20593–0001. Telephone (202) 372–1401, fax (202) 372–1926, or e-mail at: [Gerald.P.Mianta@uscg.mil](mailto:Gerald.P.Mianta@uscg.mil).

**SUPPLEMENTARY INFORMATION:** Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770, as amended).

#### Agenda of Committee Meeting

*The agenda tentatively includes the following items:*

- (1) Comprehensive Report of the Towing Vessel Inspection Working Group;
- (2) Status Report of the Licensing Implementation Working Group: an Approved Model Training Program for Wheelhouse Personnel;
- (3) Update from the Working Group on Lessons Learned from the Review of the AV KASTNER/BUCHANAN 14/SWIFT Collision and the MV WALLY ROLLER Incident;
- (4) Report on the Merchant Mariner Credential (MMC) Rulemaking;
- (5) Report on the STCW Rulemaking;
- (6) Update on Training and Service Requirements for Merchant Marine Officers;
- (7) Request for Info re: Use of Weather Fax and USCG HF Voice Broadcast;
- (8) Update on a Legislative Change Proposal (LCP) and the Medical Navigation and Vessel Inspection Circular (NVIC);
- (9) Update on the National Maritime Center (NMC) Restructuring/Centralization;
- (10) Presentation on DHS National Small-Vessel Security Summit;
- (11) Report of the Working Group on Voyage Planning; and

(12) Update on Commercial/Recreational Boating Interface.

#### Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. Members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Assistant Executive Director no later than April 13, 2007. Written material for distribution at a meeting should reach the Coast Guard no later than April 13, 2007. If you would like a copy of your material distributed to each member of the Committee or Working Groups in advance of a meeting, please submit 20 copies to the Assistant Executive Director no later than April 9, 2007. You may also submit this material electronically to the e-mail address in **FOR FURTHER INFORMATION CONTACT** no later than April 13, 2007. Also, at the Chair's discretion, members of the public may present comment at the end of the Public Meeting. Please understand that the Committee's schedule may be quite demanding and time for public comment may be limited.

#### Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant Executive Director as soon as possible.

Dated: March 29, 2007.

**J.G. Lantz,**

*Director of National and International Standards, Assistant Commandant for Prevention.*

[FR Doc. E7–6304 Filed 4–4–07; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

#### Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

**ACTION:** 60-day notice of information collection under review: Memorandum of Understanding to Participate in the Basic Pilot Employment Eligibility Program; Verify Employment Eligibility Status; OMB Control No. 1615–0092.

The Department of Homeland Security, U.S. Citizenship and

Immigration Services (USCIS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 4, 2007.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., 3rd Floor, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202-272-8352, or via e-mail at [rfs.regs@dhs.gov](mailto:rfs.regs@dhs.gov). When submitting comments by e-mail, add the OMB Control Number 1615-0092 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Memorandum of Understanding to Participate in the Basic Pilot Employment Eligibility Program; Verify Employment Eligibility Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security*

*sponsoring the collection:* No Agency Form Number; File OMB-18. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for profit. The Basic Pilot Program allows employers to electronically verify the employment eligibility status of newly hired employees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 40,000 MOU's at 2.333 (2 hours and 20 minutes) per response; 40,000 employers registering to participate in the program at .166 (10 minutes) per response; 4,000,000 initial queries at .05 (3 minutes) per response; 40,000 secondary queries at .333 (20 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 313,279 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., 3rd Floor, Suite 3008, Washington, DC 20529; 202-272-8377.

Dated: April 2, 2007.

**Stephen Tarragon,**

*Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. E7-6370 Filed 4-4-07; 8:45 am]

**BILLING CODE 4410-10-P**

#### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5030-N-30]

#### Announcement of Funding Awards for Resident Opportunities and Self-Sufficiency Elderly/Persons With Disabilities Program for Fiscal Year 2006

**AGENCY:** Office of Public and Indian Housing, HUD.

**ACTION:** Announcement of funding awards.

**SUMMARY:** In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the FY 2006 (FY2006) Notice of Funding Availability (NOFA) for the Resident Opportunities and Self-Sufficiency Elderly/Persons with

Disabilities Program funding for FY2006. This announcement contains the consolidated names and addresses of those award recipients selected for funding based on the rating and ranking of all applications and the allocation of funding available for each state.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning the FY2006 ROSS Elderly/Persons With Disabilities awards, contact the Office of Public and Indian Housing's Grants Management Center, Director, Iredia Hutchinson, Department of Housing and Urban Development, Washington, DC, telephone (202) 358-0221. For the hearing or speech impaired, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at (800) 877-8339. (Other than the "800" TTY number, these telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The authority for the \$10,000,000 in one-year budget authority for ROSS Elderly/Persons with Disabilities program coordinators is found in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, FY2004 (Pub. L. 108). The allocation of housing assistance budget authority is pursuant to the provisions of 24 CFR 791, subpart D, implementing section 213 (d) of the Housing and Community Development Act of 1974, as amended.

This program is intended to promote the development of local strategies to coordinate the use of assistance under the ROSS program with public and private resources to enable participating families to achieve economic independence and self-sufficiency. A Public and Indian Housing Program Coordinator assures that program participants are linked to the supportive services they need to achieve self-sufficiency.

The FY2006 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** NOFA published on March 8, 2006 (71 FR 11913). Applications were scored based on the selection criteria in that Notice and funding selections made based on the rating and ranking of applications within each state.

In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 33 awards made under the ROSS Elderly/Persons with Disabilities Program competition.

Dated: March 6, 2007.

**Orlando J. Cabrera,**

*Assistant Secretary for Public and Indian  
Housing.*

**APPENDIX A—FISCAL YEAR 2006 FUNDING AWARDS FOR THE ROSS ELDERLY/PERSONS WITH DISABILITIES PROGRAM**

Mobile Housing Board .....	151 South Claiborne Street .....	Mobile .....	AL	36602	\$350,000
Lutheran Social Ministry of the South- west.	5049 East Broadway, Suite 102 .....	Tucson .....	AZ	85711	375,000
The Housing Authority of the County of Los Angeles.	2 Coral Circle .....	Monterey Park .....	CA	91755	350,000
Atlanta Regional Commission .....	40 Courtland Street, Northeast .....	Atlanta .....	GA	30303	375,000
Housing and Community Development Corporation of Hawaii.	677 Queen Street, Suite 300 .....	Honolulu .....	HI	96813	388,522
Chicago Housing Authority .....	626 West Jackson Street .....	Chicago .....	IL	60661	300,000
The Housing Authority of the City of New Albany, Indiana.	Post Office Box 11 .....	New Albany .....	IN	47150	350,000
City of Wichita Housing Authority .....	332 North Riverview .....	Wichita .....	KS	67203	240,000
Housing Authority of Catlettsburg .....	210 24th Street .....	Catlettsburg .....	KY	41129	110,708
Housing Authority of Corbin .....	1336 Madison Street .....	Corbin .....	KY	40701	207,324
Grand Rapids Housing Commission .....	1420 Fuller Avenue, Southeast .....	Grand Rapids .....	MI	49507	164,734
Housing Authority of St. Louis Park .....	5005 Minnetonka Boulevard .....	St. Louis Park .....	MN	55416	210,627
Natchez Housing Authority .....	2 Auburn Avenue .....	Natchez .....	MS	39120	250,000
Public Housing Authority of Butte .....	220 Curtis Street .....	Butte .....	MT	59701	98,500
Gastonia Housing Authority .....	P.O. 2398, 340 West Long Avenue .....	Gastonia .....	NC	28053-2398	250,000
Dover Housing Authority .....	62 Whittier Street .....	Dover .....	NH	03820-2994	269,362
Garfield Housing Authority .....	71 Daniel P. Conti Court .....	Garfield .....	NJ	7026	350,000
Housing Authority of Gloucester County	100 Pop Moylan Boulevard .....	Deptford .....	NJ	8096	76,066
Housing Authority of the Township of Woodbridge.	20 Bunns Lane .....	Woodbridge .....	NJ	7095	350,000
Catholic Family Center .....	87 North Clinton Avenue .....	Rochester .....	NY	14604	375,000
Ithaca Housing Authority .....	800 South Plain Street .....	Ithaca .....	NY	14850	333,640
White Plains Housing Authority .....	223 Dr. Martin Luther King, Jr. Boule- vard.	White Plains .....	NY	10601	225,000
Columbiana Metropolitan Housing Au- thority.	325 Moore Street .....	East Liverpool .....	OH	43920	350,000
Stark Metropolitan Housing Authority ...	400 Tuscarawas Street East .....	Canton .....	OH	44702-1131	272,487
Mercer County Housing Authority .....	80 Jefferson Avenue .....	Sharon .....	PA	16146	240,000
City of San Marcos Housing Authority ..	1201 Thorpe Lane .....	San Marcos .....	TX	78666	207,311
Housing Authority of the City of El Paso.	5300 Paisano Drive .....	El Paso .....	TX	79905	450,000
Bennington Housing Authority .....	22 Willowbrook Drive .....	Bennington .....	VT	05201-1773	250,000
Rutland Housing Authority .....	5 Tremont Street .....	Rutland .....	VT	05701	248,750
Neighborhood House .....	905 Spruce Street, Suite 200 .....	Seattle .....	WA	98104	125,000
Neighborhood House .....	905 Spruce Street .....	Seattle .....	WA	98104	250,000
Friends of Housing Corporation .....	9141 West Lisbon Avenue .....	Milwaukee .....	WI	53222	375,000
Wheeling Housing Authority .....	Box 2089 11 Community Street .....	Wheeling .....	WV	26003	239,160

[FR Doc. E7-6391 Filed 4-4-07; 8:45 am]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

[Docket No. FR-4837-D-62]

**Delegation of Authority to Regional  
Directors To Waive Certain Handbook  
and Directives Provisions**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of delegation of authority to regional directors in the HUD regional offices.

**SUMMARY:** In this notice, the Secretary delegates to the Regional Directors the authority to waive certain HUD handbook provisions and directives and announces the procedures that will

govern these waivers. Specifically, the delegation provides Regional Directors with concurrent authority to waive certain HUD handbook provisions and directives. Currently, the Regional Directors are located in Region I (Boston, MA); Region II (New York, NY); Region III (Philadelphia, PA); Region IV (Atlanta, GA); Region V (Chicago, IL); Region VI (Fort Worth, TX); Region VII (Kansas City, KS); Region VIII (Denver, CO); Region IX (San Francisco, CA); and Region X (Seattle, WA).

Any waiver of HUD handbook provisions and directives made in the field must be in writing and must specify the grounds for granting it. All waiver decisions by a Regional Director in the Office of Field Policy and Management must be jointly concurred in by the appropriate regional program director or Assistant Secretary. In

addition, the Department will make available for public inspection, for at least a 3-year period, a record of all waivers of HUD handbook provisions and directives.

**EFFECTIVE DATE:** March 30, 2007.

**FOR FURTHER INFORMATION CONTACT:** Aaron Santa Anna, Assistant General Counsel for Regulations, Office of Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; telephone number (202) 708-3055 or Mark Borum, Field Management Officer, Office of Field Policy and Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7122, Washington, DC 20410; telephone number (202) 708-1123. (These are not toll-free numbers.) These

numbers may be accessed through TTY by calling the Federal Information Relay Service at (800) 877-8339. Comments or questions can be submitted through the Internet to *Aaron\_Santa\_Anna@hud.gov* or to *Mark\_G.\_Borum@hud.gov*.

**SUPPLEMENTARY INFORMATION:** Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989) added section 7(q) to the Department of Housing and Urban Development Act (HUD Act) (42 U.S.C. 3535(q)). Section 7(q) provides that any waiver of a HUD regulation or handbook provision must be in writing, specify the grounds for the waiver, and be indexed and made available for public inspection (42 U.S.C. 3535(q)(4)).

Pursuant to section 7(q) of the HUD Act, a regulation can be waived only by the Secretary or a designated Assistant Secretary or equivalent rank. The Secretary is the ultimate repository of the authority both to issue and to waive the regulations of the Department. The Secretary may delegate each of these powers to other HUD officers. Under section 7(q) of the HUD Act, however, the Secretary may not delegate the authority to waive a regulation below the Assistant Secretary rank. Individuals serving in an "acting" capacity may exercise the authority contained in this delegation. This delegation is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345 *et seq.*).

*Definitions* as used in this delegation:

*Assistant Secretary* means an Assistant Secretary of the Department under section 4(a) of the Department of Housing and Urban Development Act (42 U.S.C. 3533(a)), or an individual of equivalent rank.

*Individual of equivalent rank* means an individual with rank equivalent to an Assistant Secretary. The term includes the following HUD officers: The General Counsel; the Inspector General; the President of the Government National Mortgage Association (GNMA); the Chief Financial Officer; and other positions appointed by the President requiring Senate confirmation.

*Regional Director* means an individual who is responsible for managing a HUD regional office.

*Directive*<sup>1</sup> means a non-Federal Register publication, as defined in HUD's handbook on the "HUD Directives System" (Handbook No.

000.2 REV-2 or such successor edition) and includes a handbook (including a change or supplement), notice, interim notice, special directive, and any other issuance that the Department may classify as a directive.

*Handbook* means a directive that communicates information of a non-temporary nature (including clarification of policies, instructions, guidance, procedures, forms, and reports) for HUD staff or program participants. The non-temporary nature distinguishes a handbook from temporary HUD directives, such as notices. (See paragraph 2-1A, HUD Handbook 000.2, *HUD Directives System*, or successor edition.)

*Notice*, in the context of a directive, means a non-Federal Register directive that is used to provide HUD program participants with temporary instructions involving HUD programs or to amend previous instructions until a handbook revision or change is issued. A notice must carry an expiration date of not to exceed one year, and may be extended. (See paragraph 2-1D, HUD Handbook 000.2, *HUD Directives System*, or successor edition.)

*Interim Notice* means a non-Federal Register directive that is issued at the discretion of an Assistant Secretary under emergency circumstances. Interim notices carry an expiration date not to exceed 120 days, and may not be extended. (See paragraph 2-1E, HUD Handbook 000.2, *HUD Directives System*, or successor edition.)

*Regulation* means "rule" or "regulation," as these terms are defined in Part 10 of Title 24 of the Code of Federal Regulations, and includes any material contained in Title 24 of the Code of Federal Regulations; any notice published in the **Federal Register** announcing the availability of funds, or the criteria to be used to select recipients of the funds, under any program administered by the Department; and any other notice published in the **Federal Register** that establishes program requirements pursuant to a statute that authorizes the Department to administer the program by **Federal Register** publication, pending issuance of effective regulations amending Title 24 of the Code of Federal Regulations.

*Waiver of Directives and Handbook Provisions:*

*Form and Content of Waivers.* Section 7(q) within the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q), provides that any waiver of a HUD handbook or directive provision must be in writing, specify the grounds for the waiver, and be indexed and made available for public inspection.

*Waivers of Directive or Handbook Provisions That Restate or Summarize a Regulation.* Waiver of a directive or handbook provision that restates or summarizes a regulation may constitute a regulatory waiver for purposes of this Notice. The Office of General Counsel will determine whether a handbook or directive provision is to be treated as a regulatory waiver. If the handbook or directive provision is determined to be a regulatory waiver, it must comport with section 7(q) of the HUD Act, which requires the signature of the Assistant Secretary or equivalent.

*All Prohibitions Against Discrimination.* All prohibitions against discrimination on the basis of race, sex, color, national origin, religion, handicap, age, or familial status, and all related affirmative obligations that are direct derivatives of regulations governing prohibitions of discrimination are considered regulatory prohibitions.

*Public Inspection of Waivers.* A record of each waiver of a HUD directive or handbook provision (including the grounds for granting the waiver) will be maintained in indexed form, and will be made available to the public at the HUD Headquarters office with program authority over the HUD directive. The record will be maintained for not less than the 3-year period beginning on the date the waiver is granted.

*Executive Order 12612, Federalism.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this delegation will not have substantial direct impact on states or their political subdivisions, or on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. The delegation only states procedures for granting waivers of regulations and directives, and for notifying the public of the waiver. As a result, this delegation is not subject to review under the Executive Order.

It should be noted that the actual grant of a waiver pursuant to this delegation may involve federalism implications. If this occurs, the relationship of the waiver to the Executive Order will be assessed at that time and in that context.

#### Section A: Authority Delegated

The Secretary delegates to each Regional Director concurrent authority within his or her respective jurisdiction, to waive those directives and handbook provisions pertaining to programs in the Offices of Housing, Public and Indian

<sup>1</sup> By its terms, section 106 reaches only HUD "handbooks." This is the one class of HUD directives, as defined in this Notice. In order to give section 106 the widest possible coverage, the Department has decided, as a matter of agency discretion, to subject all the Department's directives to the provisions of section 106.

Housing, Community Planning and Development, and Fair Housing and Equal Opportunity. All waivers by the Regional Directors in the Office of Field Policy and Management must be jointly concurred in by the appropriate Regional Program Director or Assistant Secretary, as directed by the applicable Assistant Secretary.

### Section B: Directives, Handbooks, and Provisions Excluded

The waiver authority delegated herein does not include the authority to waive regulations, or those Departmental directives and handbook provisions mandated by or directly predicated on a statute, executive order, or regulation, including, but not limited to, environmental, ethics, fair housing, civil rights enforcement and compliance, procurement, and other provisions. Additionally, the waiver authority delegated herein does not include the authority to waive provisions contained in the HUD Litigation Handbook.

### Section C: Authority Revoked

Any previous delegated or redelegated authority to Regional Directors inconsistent with this delegation of authority is hereby revoked.

### Section D: Authority To Redelegate

This authority may not be redelegated.

**Authority:** Section 7(q), Department of Housing and Urban Development Act (42 U.S.C. 3535(a)); Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345 *et seq.*).

Dated: March 30, 2007.

**Alphonso Jackson,**  
Secretary.

[FR Doc. E7-6390 Filed 4-4-07; 8:45 am]

BILLING CODE 4210-67-P

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Receipt of Application of Endangered Species Recovery Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability and receipt of applications.

**SUMMARY:** We announce our receipt of applications to conduct certain activities pertaining to enhancement of survival of endangered species.

**DATES:** Written comments on this request for a permit must be received by May 7, 2007.

**ADDRESSES:** Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Assistant Regional Director, Fisheries-Ecological Services, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225-0486; facsimile 303-236-0027. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act [5 U.S.C. 552A] and Freedom of Information Act [5 U.S.C. 552], by any party who submits a request for a copy of such documents within 30 days of the date of publication of this notice to Kris Olsen, by mail or by telephone at 303-236-4256. All comments received from individuals become part of the official public record.

**SUPPLEMENTARY INFORMATION:** The following applicants have requested issuance of enhancement of survival permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

*Applicant*—Western Transportation Institute, Montana State University, Bozeman, Montana, TE-150365. The applicant requests a permit to take Topeka shiner (*Notropis topeka*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

*Applicant*—Sternberg Museum, Hays, Kansas, TE-150363. The applicant requests a permit to take gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), and black-footed ferret (*Mustela nigripes*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

*Applicant*—U.S. Geological Survey, Biological Resources Division, Cortland, New York, TE-150352. The applicant requests a permit to take pallid sturgeon (*Scaphirhynchus albus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

*Applicant*—U.S. Geological Survey, Northern Prairie Wildlife Research Center, Jamestown, North Dakota, TE-121914. The applicant requests a permit amendment to modify survey and banding techniques for Interior least terns (*Sternula antillarum*), piping plovers (*Charadrius melodus*), and pallid sturgeon (*Scaphirhynchus albus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

*Applicant*—U.S. Fish and Wildlife Service, Great Plains Fish and Wildlife Management Assistance Office, Pierre, South Dakota, TE-056851. The applicant requests a renewed permit to take pallid sturgeon (*Scaphirhynchus albus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

*Applicant*—Department of the Army, Conservation Division, Ft. Riley, Kansas, TE-049623. The applicant requests a renewed permit to take Topeka shiner (*Notropis topeka*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

*Applicant*—National Park Service, Zion National Park, Springdale, Utah, TE-057485. The applicant requests a renewed permit to take Holmgren milk-vetch (*Astragalus holmgreniorum*), Shivwitz milk-vetch (*Astragalus ampullarioides*), and Southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Dated: March 21, 2007.

**Elliott N. Sutta,**

Acting Regional Director, Denver, Colorado.  
[FR Doc. E7-6341 Filed 4-4-07; 8:45 am]

BILLING CODE 4310-55-P

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Notice of Availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for Wheeler National Wildlife Refuge Complex in Limestone, Madison, and Morgan Counties, AL

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** We, the Fish and Wildlife Service, announce that a Draft Comprehensive Conservation Plan and Environmental Assessment (Draft CCP/EA) for Wheeler National Wildlife Refuge Complex is available for review and comment. The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a CCP for each national wildlife refuge. This Draft CCP, when final, will describe how we intend to manage the

Wheeler National Wildlife Refuge Complex over the next 15 years.

**DATES:** To ensure consideration, we must receive your comments no later than May 7, 2007.

**ADDRESSES:** Send your comments or requests for more information to: John Beck, Natural Resource Planner, Wheeler National Wildlife Refuge Complex, 2700 Refuge Headquarters Road, Decatur, AL 35603; Telephone 256/353-7243 ext. 32. Your comments may be sent electronically to: [John\\_Beck@fws.gov](mailto:John_Beck@fws.gov) with a subject line, "Draft CCP Comments: Wheeler NWR Complex." The Draft CCP/EA may be accessed and downloaded from the Service's Internet Web site <http://southeast.fws.gov/planning/>.

**SUPPLEMENTARY INFORMATION:** The Wheeler National Wildlife Refuge Complex is currently comprised of seven refuges, spreading across 12,500 square miles of northern Alabama. In addition, the Wheeler Complex administers five Farm Service Agency conservation easement tracts. This draft plan covers four of the seven refuges. *These refuges and their establishing dates are as follows:* Wheeler (1938); Key Cave (1997); Sauta Cave, formerly known as Blowing Wind Cave (1978); and Fern Cave (1981). The other three refuges, Cahaba River (2002), Mountain Longleaf (2003), and Watercress Darter (1980), will be addressed at a later date in a separate comprehensive conservation plan.

*Wheeler Refuge* is located among the cities of Athens, Decatur, and Huntsville. The refuge was established in 1938 by Executive Order 7926 as a breeding ground for migratory birds and other wildlife. Additional purposes were added later under the authorities of the Migratory Bird Conservation Act of 1929, and the Refuge Recreation Act of 1962. This 37,000-acre refuge is overlaid on the middle third of the Tennessee Valley Authority's Wheeler Reservoir with property in Limestone, Madison, and Morgan Counties. Refuge lands were acquired in 1934 and 1935 by the Tennessee Valley Authority to serve as a buffer strip for the reservoir, which was impounded a year later in 1936.

Considered the eastern most national wildlife refuge in the Mississippi Flyway, Wheeler provides winter habitat for the state's largest duck population and formerly supported the southernmost and Alabama's only major concentration of wintering Canada geese. Snow geese are now the most prominent component of the winter goose population.

The refuge consists of approximately 25,950 acres of land and 11,250 acres of water. Habitats consist of bottomland hardwoods, mixed hardwoods, pine uplands, shallow water embayments, and agricultural fields that support interesting flora; a bird list of 288 species; and a wide variety of mammals, reptiles, amphibians, and fishes. It is well developed with more than 100 miles of graveled roads, 2,500 acres of managed wetlands, a modern Headquarters Complex with a large Visitor Center and a Waterfowl Observation Building. Approximately 700,000 visitors are reported annually.

*Key Cave Refuge* was established in 1997 under the authority of the Fish and Wildlife Act of 1956, the Endangered Species Act of 1973, and the National Wildlife Refuge Administration Act of 1966 to ensure that the biological integrity of Key Cave, Collier Cave, and Collier Bone Cave remains intact. Key Cave is the only known refuge for the federally endangered Alabama cavefish (*Speoplatyrhinus poulsoni*). It is on the northern shore of Pickwick Lake in a limestone karst area that contains numerous sinkholes and several underground cave systems. The area's sinkholes are an integral component of groundwater recharge to the caves.

Prior to 1992, the Monsanto Company owned a large 1,060-acre-tract of land just north of Key Cave and about five miles southwest of Florence, Lauderdale County, Alabama, in the high hazard risk area of the Key Cave Aquifer. In 1992 the company sold this tract to The Conservation Fund. Five years later, the Service acquired the land and established Key Cave Refuge.

In addition to the Alabama cavefish, Key Cave Refuge also serves as a priority one maternity cave for the federally endangered gray bat (*Myotis grisescens*), as well as habitat for two species of blind crayfish (*Procamburus pecki* and *Cambarus jonesi*). Collier Cave, located approximately 1.5 miles upstream from Key Cave, and Collier Bone Cave are also considered potential habitat for these cave species. Cave entrances are located on Tennessee Valley Authority lands on the northern shore of Pickwick Lake. Furthermore, the refuge provides habitat for a variety of migratory and resident wildlife species. Several priority bird species commonly occurring on the refuge include: dickcissel, grasshopper sparrow, field sparrow, northern bobwhite, northern harrier, and short-eared owl.

*Sauta Cave Refuge*, known as Blowing Wind Cave Refuge until 1999, lies just above the Sauty Creek embayment of the Tennessee Valley Authority's Guntersville Reservoir, seven miles west

of Scottsboro, Jackson County, Alabama. The refuge consists of 264 acres of hardwood forest established in 1978 under the authority of the Endangered Species Act of 1973 to provide protection for the federally endangered gray bat and the Indiana bat (*Myotis sodalis*) and their crucial habitat. The cave provides a summer roosting site for about 300,000-400,000 gray bats and a winter hibernaculum for both bats.

Besides the endangered bats, many other species occur in the cave, including the Tennessee cave salamander (*Gyrinophilus palleucus*) and the cave salamander (*Eurycea lucifuga*). Additionally, a relatively large population (>250 individuals) of Price's potato-bean (*Apios priceana*), a federally threatened plant species, is found on the refuge. The cave has upper and lower gated entrances and 14,628 feet of mapped passage. Formations in the lower cave have been described as spectacular and petroglyphs have been found on the cave ceilings. The cave was used as a saltpeter mine during the civil war, a nightclub during the 1920s, and a fallout shelter during the 1960s. All 264 acres of habitat outside of the cave are predominately hardwood forest.

*Fern Cave Refuge* was established in 1981 under the authority of the Endangered Species Act of 1973 to provide protection for the endangered gray bat and the Indiana bat. The refuge is 20 miles west of Scottsboro and two miles northeast of Paint Rock in Jackson County, Alabama, and consists of 199 acres of forested hillside underlain by a massive cave with many stalactite- and stalagmite-filled rooms. An additional 299 acres of land are included in the approved acquisition boundary of the refuge.

The cave itself has five hidden entrances, with four of these currently occurring on the refuge. The fifth entrance (Surprise Pit) is within the approved acquisition boundary for the refuge. Recent estimates indicate that one million gray bats hibernate in the cave, making it the largest wintering colony of gray bats in the United States. In the past, the threatened American Hart's-tongue fern (*Phyllitis scolopendrum* var. *americana*) has been found on the refuge.

Significant issues addressed in the draft plan include: threatened and endangered species conservation; waterfowl management; wildlife monitoring and population surveys, invasive/exotic species control; bottomland hardwood restoration; agriculture; visitor services (e.g., hunting, fishing, wildlife observation, wildlife photography, and

environmental education and interpretation); funding and staffing; cultural resources protection; land and visitor protection; urban encroachment; and water quality issues. We developed four alternatives for managing the Wheeler Complex and chose Alternative D as the proposed alternative. These alternatives are briefly described as follows:

*Alternative A*, the no-action alternative, would continue current Complex management practices. We would not initiate any significant changes. Management emphasis would continue to focus on maintaining biological integrity of habitats found on each refuge in the Complex. All management actions would be directed towards achieving the Complex's primary purposes, including (1) conserving wintering waterfowl habitat; (2) meeting the habitat conservation goals of national and international plans; and (3) conserving wetlands, all while contributing to other national, regional, and state goals to protect and restore migratory birds, threatened and endangered species, and resident species. Alternative A represents the anticipated conditions of each refuge for the next 15 years assuming current policies, programs, and activities continue.

Refuge management programs would continue to be developed and implemented with limited baseline biological information. Active habitat management would be conducted through water level manipulations and moist-soil, cropland, and forest management designed to provide a diverse complex of habitats that meets the foraging, resting, and breeding requirements for a variety of species. Hunting and fishing would continue to be major focuses of the public use program, with no expansion of current opportunities. Current restrictions or prohibitions would remain. Environmental education, wildlife observation, and wildlife photography would be accommodated at present levels.

*Alternative B* would maximize compatible wildlife-dependent public use. It would provide for more public use recreational opportunities, while maintaining current habitat and wildlife management programs. Additional staff and/or resources would be dedicated to increasing compatible wildlife-dependent public use opportunities. Most habitat management programs, including the cooperative farming program, would continue; however, habitat improvement projects that would benefit compatible wildlife-dependent public use opportunities

would be given a higher priority. Law enforcement activities to provide visitor safety would be intensified.

Under this alternative, hunting and fishing opportunities would be expanded. At Wheeler Refuge, the number of hunting days for small game would be increased within the state hunting season framework and two additional youth fishing rodeos would be held annually. The 2,000 acres around Garth Slough, presently closed to all public entry from November 15 through January 15, would be evaluated for the possible opening of portions of the upland areas to public access under existing gate closure policy; thereby providing additional hunting and other public use opportunities. In addition, the hunting of feral hogs would be allowed during both the large game and small game seasons. At Key Cave Refuge, feral hogs would be added to the hunting permit and other hunting opportunities would be explored annually.

Increased wildlife observation and photography opportunities would result from the construction of nine new visitor facilities (e.g., three photo blinds, three wildlife observation towers, a wildlife viewing platform, a nature trail, and a wildlife drive) and the rehabilitation of existing visitor facilities. Environmental education and interpretation would be expanded by increasing the number of off-refuge programs with local schools and by constructing a new environmental education center at Wheeler Refuge. New informational brochures would be published for Key Cave, Sauta Cave, and Fern Cave Refuges and visitor access would be improved at Sauta Cave Refuge.

Additional resources would be required to accomplish the goals of this alternative. Personnel priorities would include employing additional education specialists, wildlife biologists, a law enforcement officer, and an education coordinator.

*Alternative C* would maximize wildlife/habitat management by providing for the restoration of native wildlife, fish, and plant communities and the health of those communities, while maintaining current public use opportunities. Federally listed species would be of primary concern, but needs of other resident and migratory wildlife would also be considered. At each refuge, extensive wildlife, plant, and habitat inventories would be initiated to obtain the biological information needed to implement and monitor management programs.

Studies necessary to reduce impacts of contaminants to fish, wildlife, and

plants would be developed and a complex-wide litter control program would be initiated. Research would also be initiated to explore methods for increasing conservation efforts for threatened and endangered species on Key Cave, Sauta Cave, and Fern Cave Refuges.

Habitat management programs for waterfowl impoundments, old field, cropland, grassland, and forests would be re-evaluated and step-down management plans would be developed or updated to meet the foraging, resting, and breeding requirements for a variety of species, particularly migratory birds. Any areas within the Complex with pumping capabilities and water control structures would be managed for moist-soil vegetation, or would be farmed (with 100 percent of crops left standing) to benefit migratory waterfowl. Cooperative farming would be eliminated and all farming activities would be conducted via contracts or force account using Complex staff and equipment. Farming fields would be planted in milo, corn, or soybeans (in order of preference) and flooded during the late fall and winter. Beaver control would be increased by expanding the contract with USDA's Wildlife Services and forestry management would be increased.

Law enforcement activities to protect trust resources would be intensified and a study to analyze the impacts of existing rights-of-way on refuge resources would be initiated. Results would determine if current Complex policy concerning easements should be altered. Coordination with local planning and zoning departments would be increased to help minimize encroachment from urbanization.

Under this alternative, the priority of land acquisition at Fern Cave Refuge would remain focused on acquiring land surrounding the fifth cave entrance (Surprise Pit). Based on recommendations from the Alabama Comprehensive Wildlife Conservation Strategy, we would explore methods to protect lands within the lower reaches of Piney and Limestone Creeks close to Wheeler Refuge and lands within the Key Cave high risk water recharge zone close to Key Cave Refuge.

Compatible wildlife-dependent recreation activities would continue as currently scheduled, but only when and where they would not detract from, or conflict with, wildlife management activities and objectives. All Complex lands would be closed at night to the general public and select areas of high waterfowl use on Wheeler Refuge would be closed from November-March,

reducing acreages for public hunting and eliminating all night bank fishing.

Administration plans would stress the need for increased maintenance of existing infrastructure and construction of new facilities, benefiting wildlife conservation. Additional resources would be required to accomplish the goals of this alternative. Personnel priorities would include employing additional wildlife biologists, biological technicians, maintenance workers, a law enforcement officer, a contamination specialist, and a forester.

*Alternative D*, our proposed alternative, would balance wildlife/habitat management and compatible wildlife-dependent public use. It was developed based on public comments received during scoping, and the best professional judgment of the Complex staff, biological review team, public use review team, and the comprehensive conservation planning team. Under this alternative, existing management activities would continue and some would be expanded.

This alternative would strive for a balanced approach to addressing key issues and refuge mandates, while improving wildlife and habitat management on each refuge in the Complex. It is designed to optimize habitat management for the restoration and protection of the refuge's biological diversity, while providing a balance of appropriate and compatible wildlife-dependent recreational and educational programs for visitors. Under Alternative D, refuge lands would be more intensively managed than at present to provide high-quality habitat for wildlife, particularly migratory birds. Areas within the Complex with water control capabilities would be managed for moist-soil vegetation or would be force-account farmed (with 100 percent of crops left standing) to benefit migratory waterfowl. Cooperative farming fields would be planted in corn or soybeans (in order of preference) and flooded during the late fall and winter.

Studies necessary to reduce impacts of contaminants on fish, wildlife, and plants would be developed and a complex-wide litter control program would be initiated. Research would also be initiated to explore methods for increasing conservation efforts for threatened and endangered species on Key Cave, Sauta Cave, and Fern Cave Refuges.

A large majority of Complex lands would be closed at night and select areas of high waterfowl use on Wheeler Refuge would be closed from November-March, slightly reducing acreages for both public hunting and night bank fishing. However, all six improved boat

launching facilities and several other designated night bank fishing areas would remain open at night. A free night fishing permit would be required. This action would help reduce illegal activities and human disturbance to wildlife.

Habitat management programs for waterfowl impoundments, old field, cropland, grassland, and forests would be re-evaluated and step-down management plans would be developed or updated to meet the foraging, resting, and breeding requirements for a variety of species, particularly migratory birds.

Law enforcement activities to protect resources and provide visitor safety would be intensified and a study to analyze the impacts of existing rights-of-way on resources would be initiated. Results would determine if current Complex policy concerning easements should be altered. Coordination with local planning and zoning departments would be increased to help minimize encroachment from urbanization. Under this alternative, the priority of land acquisition at Fern Cave Refuge would remain focused on acquiring land surrounding the fifth cave entrance (Surprise Pit). Based on recommendations from the Alabama Comprehensive Wildlife Conservation Strategy, we would explore methods to protect lands within the lower reaches of Piney and Limestone Creeks close to Wheeler Refuge and lands within the Key Cave high risk water recharge zone close to Key Cave Refuge.

Hunting and fishing would continue with greater emphasis on increasing opportunities and enhancing the quality of the experience. At Wheeler Refuge, the number of hunting days for small game would be increased within the state hunting season framework and an additional youth fishing rodeo would be held annually. Feral hogs would be hunted during both the large game and small game seasons. At Key Cave Refuge, the hunting program would be evaluated annually. Results would dictate if the hunting program should be expanded or reduced.

Increased wildlife observation and photography opportunities would result from the construction of four visitor facilities (e.g., a photo blind, a wildlife observation tower, a wildlife viewing platform, and a wildlife drive) and the rehabilitation of existing visitor facilities. Environmental education and interpretation would be expanded by increasing the number of off-refuge programs with local schools and by constructing an environmental education center at Wheeler Refuge. New informational brochures would be published for Key Cave, Sauta Cave, and

Fern Cave Refuges and visitor access would be improved at Sauta Cave Refuge. Administration plans would balance restoration efforts between habitat management and public use needs. Additional resources would be required to accomplish the goals of this alternative. Personnel priorities would include employing additional wildlife biologists, biological technicians, maintenance workers, assistant managers, an education coordinator, a law enforcement officer, and a contamination specialist.

Some management programs would occur regardless of which alternative is selected for implementation. Features or actions common to all four alternatives are identified and summarized below.

- *Fish and Aquatic Species*—Cooperation with the Alabama Division of Wildlife and Freshwater Fisheries for fisheries monitoring, implementing aquatic habitat improvement projects, and conducting game and non-game fish surveys would continue and increase as opportunities become available.

- *Fire Management*—Suppression of all wildland fires would continue. Prescribed fire may be used, in conjunction with other refuge management tools, to reduce hazard fuels, restore natural processes and vitality of ecosystems, improve wildlife habitat, remove or reduce non-native species, and conduct research.

- *Monitoring*—Existing migratory bird monitoring, including waterfowl surveys, bald eagle surveys, Christmas bird counts, call counts, and breeding bird surveys, would continue. More specific monitoring activities may increase to meet other objectives.

- *Research*—Special use permits would be issued on a case-by-case basis to universities, partners, and other interested parties to perform compatible, appropriate wildlife-related research and/or surveying. Research would continue to be encouraged to evaluate contaminant levels and their impacts on wildlife.

- *Cultural Resource Protection*—Current cultural resource protection efforts would continue, including a partnership with the Tennessee Valley Authority to conduct bank stabilization projects at Wheeler Refuge. Efforts to increase cultural resource protection through education and inventories would be explored.

- *Partnerships*—To aid and promote refuge management programs, currently established partnerships with agencies, organizations, and individuals would continue. Additional partnerships would be welcomed.

- *Volunteer Program*—The volunteer program would continue and would

grow as more individuals become interested in volunteering.

- *Private Lands Management*—Technical assistance for private land management would continue to be offered through the Service's Partners for Fish and Wildlife Program. Efforts to expand the program would be explored.

- *Restrictions/Limitations and Prohibitions*—All-terrain vehicle use would continue to be prohibited on all refuges in the Complex. Key Cave, Sauta Cave, and Fern Cave Refuges would continue to be closed at night and horseback riding would continue to be prohibited on these satellite refuges.

We will present the Draft CCP/EA to the public at a meeting to be held at Wheeler Refuge's Visitor Center on U.S. Highway 67, in Decatur, Alabama. Mailings, newspaper articles, and posters will be the avenues to inform the public of the date and time for the meeting. We will conduct the environmental review of this project in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those regulations. All comments received become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act NEPA (40 CFR 1506.6(f), and Departmental and Service policies and procedures.

**Authority:** This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: February 8, 2007.

**Cynthia K. Dohner,**

*Acting Regional Director.*

[FR Doc. E7–6346 Filed 4–4–07; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Proclaiming Certain Lands as Reservation for the Jicarilla Apache Nation of New Mexico

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of reservation proclamation.

**SUMMARY:** This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 56.50 acres, more or less, as an addition to the

Jicarilla Apache Nation Reservation, New Mexico.

**FOR FURTHER INFORMATION CONTACT:** Ben Burshia, Bureau of Indian Affairs, Division of Real Estate Services, Mail Stop 4639–MIB, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208–7737.

**SUPPLEMENTARY INFORMATION:** This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued, according with Section 7 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. § 467), for the land described below. The land was proclaimed to be the Jicarilla Apache Nation Reservation for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

Rio Arriba County, Boyd Ranch Tract, within the Tierra Amarilla Grant, New Mexico.

The above-described lands, contain a total of 56.40 acres, more or less, officially designated the Boyd Ranch Tract, within the Tierra Amarilla Grant, New Mexico, as surveyed in 2003 by the U.S. Department of the Interior, Bureau of Land Management, Cadastral Survey, and shown on the official plat of survey and described in the official field note record, both approved May 19, 2004, and filed in the records of the Bureau of Land Management, New Mexico State Office, in Santa Fe, New Mexico, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: March 24, 2007.

**Carl J. Artman,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. E7–6386 Filed 4–4–07; 8:45 am]

**BILLING CODE 4310–W7–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Proclaiming Certain Lands, Gomez Ranch, as an Addition to the Reservation for the Jicarilla Apache Nation, New Mexico

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Reservation Proclamation.

**SUMMARY:** This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 5,696.64 acres, more or less, as an addition to the Jicarilla Apache Nation Reservation, New Mexico.

**FOR FURTHER INFORMATION CONTACT:** Ben Burshia, Bureau of Indian Affairs, Division of Real Estate Services, Mail Stop 4639–MIB, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208–7737.

**SUPPLEMENTARY INFORMATION:** This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued, according with Section 7 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the land described below. The land was proclaimed to be an addition to the Jicarilla Apache Nation Reservation for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

#### New Mexico Principal Meridian

Rio Arriba County, New Mexico

The land descriptions and acreages listed below for Township 31 North, Range 1 East, and Township 31 North, Range 1 West, New Mexico Principal Meridian, are based on the official surveys conducted in 2005 by the U.S. Department of the Interior, Bureau of Land Management, Cadastral Survey, and shown on the official plats of survey and described in the official field note records, all approved December 18, 2006, and filed in the records of the Bureau of Land Management, New Mexico State Office, in Santa Fe, New Mexico.

Township 31 North, Range 1 East, N.M.P.M.  
*Section 18:* NE/4SW/4, W/2SE/4, SE/4SE/4 (Containing 167.09 acres, more or less);  
*Section 19:* Lots 3 and 4, E/2SW/4, SE/4, S/2NE/4, NW/4NE/4, NE/4NW/4 (Containing 496.37 acres, more or less);  
*Section 27:* SW/4 (Containing 159.94 acres, more or less);  
*Section 28:* NW/4SW/4, S/2SW/4 (Containing 124.53 acres, more or less);  
*Section 29:* N/2, NE/4SE/4 (Containing 357.41 acres, more or less);  
*Section 30:* Lots 1, 2, 3 and 4, E/2W/2, NE/4 (Containing 483.91 acres, more or less);  
*Section 31:* Lots 1, 2, 3 and 4, E/2W/2, E/2 (Containing 648.03 acres, more or less);  
*Section 32:* All (Containing 648.22 acres, more or less);  
*Section 33:* All (Containing 641.68 acres, more or less);  
*Section 34:* Lots 5, 6, 7 and 8, SW/4 (Containing 322.46 acres, more or less)

The total area of this tract located in Township 31 North, Range 1 East, N.M.P.M.,

Rio Arriba County, New Mexico, is 4,049.64 acres, more or less.

Township 31 North, Range 1 West, N.M.P.M.

*Section 7:* Lot 4, E/2SE/4 (Containing 114.23 acres, more or less);

*Section 8:* SW/4, N/2SE/4, SW/4SE/4, S/2N/2 (Containing 454.49 acres, more or less);

*Section 17:* S/2, N/2N/2, S/2NW/4, SW/4NE/4 (Containing 601.61 acres, more or less);

*Section 18:* Lots 1, 3 and 4, SE/4SW/4, SE/4, SE/4NE/4, NE/4NW/4, N/2NE/4 (Containing 476.67 acres, more or less)

The total area of this tract located in Township 31 North, Range 1 West, N.M.P.M., Rio Arriba County, New Mexico, is 1,647.00 acres, more or less.

The grand total of the above-described lands, containing 5,696.64 acres, more or less, is subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easement for public roads and highways, public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: March 24, 2007.

**Carl J. Artman,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. E7-6389 Filed 4-4-07; 8:45 am]

**BILLING CODE 4310-W7-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Proclaiming Certain Land as Reservation for the Pueblo of Laguna of New Mexico

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Reservation Proclamation.

**SUMMARY:** This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 651.6965 acres, more or less, located in Tract B, and Lot 16 as indicated in Exhibit A, attached to the Warranty Deed, approved April 10, 2003, as an addition to the Pueblo of Laguna Reservation (Laguna).

**FOR FURTHER INFORMATION CONTACT:** Ben Burshia, Bureau of Indian Affairs, Division of Real Estate Services, Mail Stop 4639—MIB, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208-7737.

**SUPPLEMENTARY INFORMATION:** This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—

Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued, according with Section 7 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the tract of land described below. The land was proclaimed to be an addition to and part of the Laguna Reservation for the exclusive use of Indians on that reservation who are entitled to reside on the reservation by enrollment or tribal membership.

#### New Mexico Principal Meridian

Valencia County, New Mexico

A parcel of land, containing 651.6965 acres, more or less, located in Tract B of the Division Plat for Lands of Grady Day, within Sections 3 and 10, Township 8 North, Range 3 West, N.M.P.M., containing 650.1565 acres, more or less, as indicated in Exhibit A, attached to the Warranty Deed, dated April 10, 2003; and

Lot Sixteen (16), Block One (1), Unit (4), Highland Meadows Estates, containing 1.54 acres, more or less, also indicated in Exhibit A, and according to the Plat as filed for record on July 2, 1970, in File Number 54-A, in the Office of the County Clerk of Valencia County, New Mexico.

The above-described lands contain a total of 651.6965 acres, more or less, as indicated in Exhibit A, attached to the Warranty Deed approved April 10, 2003, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation neither affects title to the land described above, nor does it affect any valid existing easement for public roads and highways, for public utilities or for railroads and pipelines, and any other rights-of-way or reservations of record.

Dated: March 24, 2007.

**Carl J. Artman,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. E7-6387 Filed 4-4-07; 8:45 am]

**BILLING CODE 4310-W7-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Proclaiming Certain Lands, Bowlin Property, as an addition to the Pueblo of Laguna Reservation, NM

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Reservation Proclamation.

**SUMMARY:** This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 30.754 acres, more or less, to be added to the Pueblo of Laguna Reservation (Laguna), New Mexico.

**FOR FURTHER INFORMATION CONTACT:** Ben Burshia, Bureau of Indian Affairs, Division of Real Estate Services, Mail Stop 4639—MIB, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208-7737.

**SUPPLEMENTARY INFORMATION:** This Notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued, according with Section 7 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the land described below. The land was proclaimed to be an addition to and part of the Laguna Reservation for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

#### New Mexico Principal Meridian

Bernalillo County, New Mexico

Section 04, Township 09 North, Range 1 West, N.M.P.M.

A parcel of land, containing 30.754 acres, more or less, located within Lots 6, 7, 8 and 9 of Section 04, Township 09 North, Range 1 West, N.M.P.M., County of Bernalillo, State of New Mexico, being more particularly bounded and described as follows, to-wit:

Beginning at a point where the northerly line of the Antonio Sedillo Grant intersects the southerly right of way line of NMP I-040-3(31)137, County of Bernalillo, State of New Mexico, from which point the southwest corner of Section 4 bears N. 89°41'36" W. a distance of 782.46 feet; thence N. 74°50'24" E. along the southerly right of way line of I-040-3(31)137 a distance of 253.13 feet to a point of curve; thence Northeasterly on a 2.533° curve (radius = 2,262 feet) through an arc of 13°30' to the right a distance of 532.96 feet to a point of tangent; thence N. 88°27'04" E. a distance of 933.28 feet; thence S. 1°32'56" E. a distance of 45 feet; thence N. 88°27'04" E. a distance of 358.96 feet to a point of curve; thence Northeasterly on a 7.649° curve (radius = 749.12 feet) through an arc of 38°30' to the left a distance 503.33 feet to a point of compound curve; thence Northeasterly on a 13.906° curve (radius = 412.06 feet) through an arc of 16°30' to the left a distance of 118.65 feet; thence S. 56°32'56" E. a distance of 50 feet to a point on curve; thence Northeasterly on a 12.401° curve (radius = 462.06 feet) through an arc of 25°30' to the left a distance of 205.63 feet; thence N. 82°02'56" W. distance of 50 feet to a point on curve; thence Northeasterly on a 13.906° curve (radius = 412.06 feet) through an arc of 20°54'50" to the left a distance of 150.39 feet; thence N. 74°50'24" E. a distance of 960.45 feet to a point on the westerly line of the Town of Atrisco Grant; thence S. 0°03'24" W. along said westerly Grant line a distance of 204.5 feet; thence S. 23°11'36" E. a distance of 858.0 feet; thence N. 89°41'36" W. a distance of 3926.38 feet to the point and place of beginning.

The above-described lands contain a total of 30.754 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: March 24, 2007.

**Carl J. Artman,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. E7-6388 Filed 4-4-07; 8:45 am]

BILLING CODE 4310-W7-P

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-489]

### U.S. Agricultural Sales to Cuba: Certain Economic Effects of U.S. Restrictions

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of investigation and scheduling of public hearing.

**SUMMARY:** Following receipt of a request on March 16, 2007, from the Committee on Finance of the United States Senate (Committee), the Commission instituted investigation No. 332-489, U.S.

Agricultural Sales to Cuba: Certain Economic Effects of U.S. Restrictions, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

**DATES:**

*March 30, 2007:* Date of institution.

*April 24, 2007:* Deadline for filing requests to appear at the public hearing.

*April 26, 2007:* Deadline for filing pre-hearing briefs and statements.

*May 1, 2007, 9:30 a.m.:* Public hearing.

*May 8, 2007:* Deadline for written statements, including any post-hearing briefs.

*June 29, 2007:* Transmittal of report to the Committee on Finance.

**ADDRESSES:** All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions, including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be

viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Industry-specific information may be obtained from John Reeder, Project Leaders (202-205-3319; [john.reeder@usitc.gov](mailto:john.reeder@usitc.gov)), or Joanna Bonarriva, Project Leaders (202-205-3312; [joanna.bonarriva@usitc.gov](mailto:joanna.bonarriva@usitc.gov)), Office of Industries, United States International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of General Counsel (202-205-3091; [william.gearhart@usitc.gov](mailto:william.gearhart@usitc.gov)). The media should contact Margaret O'Laughlin, Public Affairs Office (202-205-1819; [margaret.olaughlin@usitc.gov](mailto:margaret.olaughlin@usitc.gov)). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202-205-1810). General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

**SUPPLEMENTARY INFORMATION:** As

requested by the Committee, the Commission will conduct an investigation and provide a report that contains, to the extent possible, the following information:

- An overview of Cuba's purchases of agricultural, fish and forestry products from, to the extent possible, 2000 to the present, including identification of major supplying countries, products, and market segments;

- An analysis of the effects that U.S. restrictions, including those relating to export financing terms and travel to Cuba by U.S. citizens, may have had or currently have on Cuban purchases of U.S. agricultural, fish, and forestry products; and,

- A qualitative and, to the extent possible, quantitative estimate of U.S. sales of agricultural, fish and forestry products to Cuba, in the event that: (i) Statutory, regulatory, or other restrictions affecting agricultural exports are removed, (ii) statutory, regulatory, or other restrictions on travel to Cuba by U.S. citizens are lifted, and, (iii) statutory, regulatory, or other restrictions affecting agricultural exports are removed and statutory, regulatory or other restrictions on travel to Cuba by U.S. citizens are lifted.

As requested, the Commission will transmit its report to the Committee by June 29, 2007.

**Public Hearing:** A public hearing in connection with the investigation is scheduled to be held at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC beginning at 9:30 a.m. on May 1, 2007. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, no later than 5:15 p.m., April 24, 2007. Any pre-hearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., April 26, 2007. The deadline for filing post-hearing briefs or statements is 5:15 p.m., May 8, 2007. In the event that, as of the close of business on April 24, 2007, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary (202-205-2000) after April 24, 2007, to determine whether the hearing will be held.

**Written Statements:** In lieu of or in addition to participating in the hearing, interested persons are invited to submit written statements concerning the investigation. All submissions should be addressed to Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, and should be received no later than the close of business on May 8, 2007. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except as permitted by section 201.8 of the Commission's Rules (19 CFR 201.8) (see Handbook for Electronic Filing Procedures, [http://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/documents/handbook\\_on\\_electronic\\_filing.pdf](http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf)).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR

201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Committee has asked that the report that the Commission transmits not contain any confidential business information. Any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.  
Issued: April 2, 2007.

**Marilyn R. Abbott,**  
*Secretary to the Commission.*

[FR Doc. E7-6409 Filed 4-4-07; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-551]

### In the Matter of Certain Laser Bar Code Scanners and Scan Engines, Components Thereof, and Products Containing Same; Notice of Commission Determination To Review a Final Determination on Violation of Section 337; Schedule for Briefing on the Issues on Review and on Remedy, Public Interest, and Bonding; Denial of Motion for Stay of Sanctions Order

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination ("ID") issued by the presiding administrative law judge ("ALJ") on November 20, 2006, regarding whether there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation. The Commission has also determined to deny respondents' motion for stay of the ALJ's sanctions order.

**FOR FURTHER INFORMATION CONTACT:** Paul M. Bartkowski, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708-5432. Copies of non-confidential

documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** This investigation was instituted on October 26, 2005, based on a complaint filed by Symbol Technologies Inc. ("Symbol") of Holtville, New York. The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain laser bar code scanners or scan engines, components thereof, or products containing the same, by reason of infringement of various claims of United States Patent Nos. 5,457,308 ("the '308 patent"); 5,545,889 ("the '889 patent"); 6,220,514 ("the '514 patent"); 5,262,627 ("the '627 patent"); and 5,917,173 ("the '173 patent"). The complaint named two respondents: Metro Technologies Co., Ltd. of Suzhou, China; and Metrologic Instruments, Inc. of Blackwood, New Jersey (collectively, "Metrologic").

On January 29, 2007, the ALJ issued an ID finding a violation of Section 337 in the importation of certain laser bar code scanners and scan engines, components thereof, and products containing the same, in connection with certain asserted claims. The ID also issued monetary sanctions against Respondents for discovery abuses. Complainant, Respondents, and the Commission investigative attorney (IA) each filed petitions for review on February 8, 2007. They each filed responses to each other's petitions on February 16, 2007.

Meanwhile, on February 8, 2007, Metrologic filed a motion for stay of the ALJ's sanctions order. The IA and Symbol filed oppositions to the motion on February 20, 2007. Upon consideration of the parties' filings, the Commission has determined to deny Metrologic's motion for stay.

On February 21, 2007, the Commission extended the deadline for

determining whether to review the subject ID by fifteen (15) days, to March 30, 2007.

Having examined the record of this investigation, including the ALJ's final ID and the submissions of the parties, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review: (1) The construction of "single, unitary, flexural component" in the '173 patent, and related issues of infringement, domestic industry, and validity; (2) the construction of "oscillatory support means" in the '627 patent, and related issues of infringement, domestic industry, and validity; (3) the construction of claims containing the so-called "central area" limitations in the '889 patent, and related issues of infringement, domestic industry, and validity; (4) the construction of the "scan fragment" limitation in the '308 patent; and (5) the construction of the term "plurality" in the '308 patent. The Commission requests briefing based on the evidentiary record on certain of the issues on review. The Commission is particularly interested in responses to the following questions:

Regarding the '173 patent:

(1) What is the effect of Symbol's statement in the prosecution history that "[c]laim 70 [issued claim 17] also contains the feature of allowable claim 58" on a proper claim construction?

(2) If Symbol's statement limited the scope of the claim, what is the effect on claim construction, infringement, domestic industry, and validity issues as they relate to the '173 patent?

(3) If Symbol's statement limits the scope of the claim by providing that the component have "spring portions integral with each other," what would be the effect, if any, on the analysis? In other words, if a flexural component is "single," and "unitary," does it necessarily have "spring portions integral with each other"?

Regarding the '627 patent:

(1) How should the modifier "oscillatory" be construed in the limitation "oscillatory support means"?

(2) How does the construction of the word "oscillatory" affect infringement, domestic industry, and validity as those issues relate to the '627 patent?

Regarding the '889 patent:

(1) What effect does Symbol's statements during prosecution history such that the smaller mirror is "centrally positioned" with respect to the larger mirror have on claim construction?

(2) If such statements limit claim scope, what effect does that limitation have on claim construction,

infringement, domestic industry, and validity as those issues relate to the '889 patent?

Furthermore, in connection with the final disposition of this investigation, the Commission may (1) Issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

**Written Submissions:** The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to

the record in this investigation, including references to exhibits and testimony. Additionally, parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on April 9, 2007. Reply submissions must be filed no later than the close of business on April 16, 2007. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42-46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42-46).

Issued: March 30, 2007.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E7-6393 Filed 4-4-07; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-599]

### In the Matter of Certain Lighting Control Devices Including Dimmer Switches and/or Switches and Parts Thereof; Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 2, 2007, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Lutron Electronics Co., Inc. of Coopersburg, Pennsylvania. An amended complaint was filed on March 19, 2007. The amended complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lighting control devices including dimmer switches and/or switches and parts thereof by reason of infringement of certain claims of U.S. Patent Nos. 5,637,930, 5,248,919, 5,982,103, 5,905,442, and 5,736,965. The amended complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

**ADDRESSES:** The amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://www.usitc.gov/secretary/edis.htm>

**FOR FURTHER INFORMATION CONTACT:**

Benjamin Levi, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2781.

*Authority:* The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2006).

*Scope of Investigation:* Having considered amended complaint, the U.S. International Trade Commission, on March 30, 2007, *Ordered that—*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain lighting control devices including dimmer switches and/or switches and parts thereof by reason of infringement of one or more of claims 1, 36, 65, 83, 85, 87, 89, 90, 94, 112, 114, 116, 118, 119, 123, 149, 178, 193, 195, 197, 199, and 200 of U.S. Patent No. 5,637,930; claims 44, 47, and 49 of U.S. Patent No. 5,248,919; claims 1-5, 8-10, 12, and 22 of U.S. Patent No. 5,982,103; claims 151, 152, and 155-157 of U.S. Patent No. 5,905,442; and claims 1, 3, and 14 of U.S. Patent No. 5,736,965; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Lutron Electronics Co., Inc., 7200 Suter Road, Coopersburg, Pennsylvania 18036.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served:

Leviton Manufacturing Co., Inc., 59-25 Little Neck Parkway, Little Neck, New York 11362.

Control4, 11734 South Election Road, Salt Lake City, Utah 84020.

(c) The Commission investigative attorney, party to this investigation, is Benjamin Levi, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401-R, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Robert L. Barton, Jr. is

designated as the presiding administrative law judge.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against a respondent.

Issued: March 30, 2007.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E7-6394 Filed 4-4-07; 8:45 am]

**BILLING CODE 7020-02-P**

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on March 23, 2007, a proposed consent decree in *United States v. Allied Waste Industries and Waste Management*, Civil Action No. 06-5245, was lodged with the United States District Court for the Northern District of Illinois.

In this cost recovery action brought pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607, the United States sought recovery of unreimbursed past response costs and prejudgment interest incurred by the United States Environmental Protection

Agency at the Tri-County/Elgin Landfills Superfund Site located near Elgin in Kane County, Illinois. Under the proposed consent decree, Allied Waste Industries, Inc. (formerly known as BFI Waste Industries) and Waste Management of Illinois, Inc. will pay a total of \$2,120,000 to the Hazardous Substance Superfund.

The Department of Justice will accept comments relating to the proposed consent decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and mailed either electronically to [pubcommentees.enrd@usdoj.gov](mailto:pubcommentees.enrd@usdoj.gov) or in hard copy to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611. Comments should refer to *United States v. Allied Waste, et al.*, Civil No. 06-5245 (N.D. Ill.) and D.J. Reference No. 90-11-3-08672.

The proposed consent decree may be examined at: (1) The Office of the United States Attorney for the Northern District of Illinois, 219 South Dearborn Street, Suite 500, Chicago, Illinois 60604, (312) 353-5300; and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590 (contact Jeffrey A. Cahn (312-886-6670)). During the comment period, the proposed consent decree may also be examined on the following Department of Justice Web site: [http://www.usdoj.gov/enrd/Consent\\_Decree.html](http://www.usdoj.gov/enrd/Consent_Decree.html). A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please refer to the referenced case and D.J. Reference No. 90-11-3-08672, and enclose a check in the amount of \$24.50 for the consent decree (98 pages at 25 cents per page reproduction costs), made payable to the U.S. Treasury.

**William D. Brighton,**

*Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.*

[FR Doc. 07-1655 Filed 4-4-07; 8:45 am]

**BILLING CODE 4410-15-M**

## DEPARTMENT OF JUSTICE

**Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act**

Notice is hereby given that on March 15, 2007, a proposed consent decree in *United States v. Glacier Northwest, Inc.*, Civil Action No. C07-5121RJB, was lodged with the United States District Court for the Western District of Washington.

In this action the United States, State of Washington, Puyallup Tribe of Indians and Muckleshoot Indian Tribe sought natural resource damages for releases of hazardous substances into Commencement Bay, Washington. The decree provides that defendant will pay the trustees \$187,512.00 for natural resource damages and \$20,804.24 in damage assessment costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Glacier Northwest, Inc.*, Civil Action No. C07-5121RJB, D.J. Ref. 90-11-2-1049/7.

The decree may be examined at the Office of the United States Attorney, 700 Stewart Street, Seattle, WA 98101. During the public comment period, the consent decree, may also be examined on the following Department of Justice Web site: [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$7.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Robert E. Maher, Jr.,**

*Assistant Chief, Environmental, Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 07-1660 Filed 4-4-07; 8:45am]

BILLING CODE 4410-15-M

## DEPARTMENT OF JUSTICE

**Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act**

Notice is hereby given that on March 16, 2007, the United States electronically lodged eight separate consent decrees in *United States v. IMC Magnetics, Inc. et al.*, Civil Action No. CV07-568-PHX-SRB, with the United States District Court for the District of Arizona. The consent decrees settle the United States' claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. 9607, against: (1) IMC Magnetics Corporation ("IMC"); (2) Prestige Cleaners, Inc. ("Prestige"); (3) Cintas Corporation, as successor to Unitog Rental Services, Inc. ("Cintas"); (4) Janstar Development, Inc. ("Janstar"); (5) Circuit Express Inc. ("Circuit Express"); (6) Service & Sales, Inc. ("Service & Sales"); (7) K & S Interconnect, Inc., as successor to Cerprobe Corporation ("K&S"); and (8) Sherman Leibovitz, d/b/a Eldon Drapery Cleaners ("Mr. Leibovitz"), in connection with the South Indian Bend Wash Superfund Site in Tempe, Maricopa County, Arizona (the "Site"). The settling defendants, pursuant to the respective consent decrees, will reimburse the United States for CERCLA response costs as follows: IMC, \$1,162,500; Prestige, \$251,875; Cintas, \$612,250; Janstar, \$3,875; Circuit Express, \$39,000; Service & Sales, \$39,000; K & S, \$39,000; and Mr. Leibovitz, \$77,500. The funds will be placed into a Superfund special account for the Site. The consent decrees provide each settling defendant with a covenant not to sue from the United States for the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *U.S. v. IMC Magnetics, et al.*, No. CV07-568-PHX-SRB and D.J. Ref. #90-11-2-413/3.

The consent decrees may be examined at the Office of the United States Attorney, 2 Renaissance Square, 40 North Central Street, Suite 1200, Phoenix, Arizona, (602) 514-7500, and

at U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. During the public comment period, the consent decrees may also be examined on the following Department of Justice Web site: [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the consent decrees may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 by e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)) or by faxing a request to (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please identify the consent decree or consent decrees requested and enclose a check in the amount of \$6 (25 cents per page reproduction cost) for each such consent decree, and make the check payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Henry S. Friedman,**

*Assistant Chief, Environmental, Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 07-1654 Filed 4-4-07; 8:45 am]

BILLING CODE 4410-15-M

## DEPARTMENT OF JUSTICE

**Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act**

Notice is hereby given that on March 20, 2007, a proposed Consent Decree in the lead case *Lyondell Chemical Co., et al. v. Albemarle Corp. et al.*, Civil Action No. 01CV890, consolidated with *United States v. EPEC Polymers, Inc.*, 02CV003, and *El Paso Tennessee Pipeline Co., et al. v. Chevron USA, Inc., et al.*, 03CV0225, was lodged with the United States District Court for the Eastern District of Texas.

This settlement relates to the Petro-Chemical Systems, Inc. Superfund Site located in Liberty County, Texas ("the Site"), approximately 15 miles southeast of Liberty, Texas. The Site was used as an unpermitted waste disposal site from the late 1960's through the 1970's and received wastes from the petrochemical industry in Houston.

On December 6, 2001, Atlantic Richfield Company (hereinafter "ARCO") and Lyondell Chemical Company (successor to Arco Chemical Company) (together with ARCO, hereinafter "ARCO/Lyondell") sued a number of parties, including the Settling Funding Defendants (AK Steel

Corporation, Beazer East, Inc., E.I. du Pont de Nemours and Company, The Goodyear Tire & Rubber Company, Southline Metal Products Company, Inc., and United States Steel Corporation) and the Settling El Paso Defendants (EPEC Polymers, Inc., El Paso Tennessee Pipeline Company, EPEC Corporation, and Tennessee Gas Pipeline Company), for cost recovery and contribution under CERCLA Sections 107 and 113, 42 U.S.C. 9607 and 9613, on the grounds that these parties were liable under CERCLA for the remediation of the Site. On January 3, 2002, the United States filed a complaint against EPEC Polymers, Inc. pursuant to CERCLA Section 107, 42 U.S.C. 9607, seeking, *inter alia*: (1) Reimbursement of response costs and (2) a declaratory judgment of liability for any future response costs incurred by the United States at the Site. The Settling El Paso Defendants also brought contribution claims against various parties including the Settling Funding Defendants.

Under the proposed Consent Decree, the United States provides covenants not to sue settling defendants under CERCLA Sections 106 and 107, 42 U.S.C. 9606 and 9607, in connection with the Site. CERCLA Section 113(f)(2), 42 U.S.C. 9613(f)(2), provides that contribution protection arises for matters addressed in the proposed Consent Decree. The proposed Consent Decree defines the "matters addressed" as "all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or any other person with respect to the Site." In addition, under the proposed Consent Decree, EPEC Polymers, Inc. will: (1) Reimburse the United States for \$6.9 million of its past costs (with interest accruing since January 17, 2005); (2) will remediate two of the three remaining known contaminated areas of the Site (the value of the project is currently estimated to be \$13.4 million); and (3) will reimburse the United States approximately \$3.1 million for costs incurred after July 31, 2004. In addition, the Settling Funding Defendants will be obligated to pay a share of the Remedial Action costs (\$5,837,000) to EPEC Polymers, Inc. and ARCO/Lyondell.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or mailed to P.O. Box 7611, U.S.

Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. EPEC Polymersm, Inc.*, D.J. Ref. 90-11-3-709/1.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Texas, 350 Magnolia Avenue, Suite 350, Beaumont, Texas 77657, and at U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy by mail, from the Consent Decree Library, please enclose a check in the amount of \$29.95 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Thomas A. Mariani, Jr.,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 07-1656 Filed 4-4-07; 8:45 am]

**BILLING CODE 4410-15-M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Settlement Pursuant to Clean Air Act

Notice is hereby given that, on March 23, 2007, a proposed Consent Decree in *United States v. Nacirema Environmental Services Company, Inc.*, Civil Action No. 07-1361, was lodged with the United States District Court for the District of New Jersey.

In this action, the United States sued Nacirema Environmental Services Company, Inc. for violations of the Clean Air Act ("Act"), 42 U.S.C. 7401-7671q, and the National Emission Standard for Hazardous Air Pollutants for asbestos ("Asbestos NESHAP"), 40 CFR Part 61, Subpart M, in connection with Nacirema's failure to provide advanced notice to the U.S. Environmental Protection Agency ("EPA") of the demolition of at least 18 facilities in New Jersey and New York, its failure to comply with an EPA request for information, and its failure to comply with an EPA Administrative Compliance Order requiring submission of that same information. The settlement requires Defendant to pay a civil penalty of \$65,000, to spend an additional \$65,000 on a supplemental

environmental project involving asbestos abatement in low-income homes, and to provide additional injunctive relief including asbestos training for Nacirema employees and management reforms.

The Department of Justice will accept comments relating to the settlement for a period of thirty (30) days from the date of publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and mailed either electronically to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or in hard copy to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611. Comments should refer to *U.S. v. Nacirema Environmental Services Company, Inc.*, DJ No. 90-5-2-1-08411.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of New Jersey, 970 Broad Street, Suite 700, Newark, New Jersey 07101. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site: [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood at [tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov), or at fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$14 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the above-referenced address.

**Ronald Gluck,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 07-1653 Filed 4-4-07; 8:45am]

**BILLING CODE 4410-15-M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on March 22, 2007, a proposed Consent Decree in *United States v. PSD Queens Drive LP*, C.A. No. 2:07-cv-01137-GP (E.D.Pa.), was lodged with the United States District Court for the Eastern District of Pennsylvania.

The Consent Decree resolves the United States' claims against PSD Queens Drive LP and others with respect to response costs incurred, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607. These costs were incurred as a result of response actions taken by the U.S. Environmental Protection Agency at the Stanley Kessler Superfund Site, located in Montgomery County, Pennsylvania. The Consent Decree also resolves the United States' claim regarding continued implementation of a long-term groundwater remedy at the Site.

Under the Consent Decree, defendants will pay the United States \$75,000 in reimbursement of response costs incurred in connection with the Site, and will pay future response costs incurred by the United States. Further, defendants have agreed to continue implementation of a long-term groundwater remedy as described in the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov), or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. PSD Queens Drive LP, et al.*, DOJ Reference No. 90-7-1-106/1. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(b) of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at the Office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania 19106, and at U.S. EPA Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: <http://www.usdoj.gov/enrd/ConsentDecree.html>. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy of the Consent Decree, without 3 Appendices, from the Consent Decree Library, please enclose a check

in the amount of \$25.00 (25 cents per page production costs), payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address. In requesting a copy, with 3 Appendices, please enclose a check in the amount of \$52.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Robert D. Brook,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 07-1657 Filed 4-4-07; 8:45am]

**BILLING CODE 4410-15-M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Consistent with Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), and 28 CFR 50.7, notice is hereby given that on March 21, 2007, the proposed Consent Decree in *United States v. Raybestos Products Company*, Civil Action No. 1:07-cv-00374-DFH-TAB, was lodged with the United States District Court for the Southern District of Indiana. The proposed Consent Decree resolves the United States' claim under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607(a), relating to response costs incurred at or from sites known as the Shelly Ditch Reaches 1-3 Superfund Site, the Shelly Ditch Reach 4 Superfund Site, and the Sugar Creek Remedial Site, all located in Crawfordsville, Montgomery County, Indiana, as well as costs incurred at the Calumet Containers Site located in Hammond, Lake County, Indiana. The Consent Decree requires Raybestos Products Company ("Raybestos") to pay \$119,519.18 to the United States in partial reimbursement of response costs the United States Environmental Protection Agency ("EPA") incurred at the Reach 4 Site. Among other things, the Consent Decree also requires that Raybestos not seek reimbursement for the response actions it conducted at the Reaches 1-3 Site pursuant to a Unilateral Order issued by EPA in December 2000 and modified in January 2001.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the

Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Raybestos Products Company*, D.J. Ref. 90-11-3-08736.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 10 W. Market St., Suite 2100, Indianapolis, IN 46204 and at U.S. EPA Region V, 77 W. Jackson Blvd., Chicago, IL 60604. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/ConsentDecrees.html>. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation no. (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$16.50 (25 cents per page reproduction cost) payable to the "U.S. Treasury" or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Henry S. Friedman,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 07-1661 Filed 4-4-07; 8:45 am]

**BILLING CODE 4410-15-M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on March 15, 2007, a proposed consent decree in *United States v. Streich Bros., Inc.*, Civil Action No. C07-5120RJB, as lodged with the United States District Court for the Western District of Washington.

In this action the United States, State of Washington, Puyallup Tribe of Indians and Muckleshoot Indian Tribe sought natural resource damages for releases of hazardous substances into Commencement Bay, Washington. The decree provides that defendant will pay trustees \$181,948.0 for natural resource damages and \$20,189.15 in damage assessment costs.

The Department of Justice will receive for a period of thirty (30) days from the

date of this publication comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Streich Bros., Inc.*, Civil Action No. C07-5120RJB, D.J. Ref. 90-11-1-1049/8.

The decree may be examined at the Office of the United States Attorney, 700 Stewart Street, Seattle, WA 98101. During the public comment period, the consent decree, may also be examined on the following Department of Justice Web site: [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$7.15 (25 cents per page reproduction costs) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Robert E. Maher, Jr.,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 07-1659 Filed 4-4-07; 8:45 am]

BILLING CODE 4410-15-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Workforce Investment Act—Small Grassroots Organizations Connecting with the One-Stop Delivery System; Solicitation for Grant Applications

*Announcement Type:* New—Notice of solicitation for grant applications (SGA).

*Funding Opportunity Number:* SGA/DFA PY-06-11.

*Catalog of Federal Domestic Assistance CFDA Number:* 17.261.

*Key Dates:* Applications are due by May 8, 2007.

**SUMMARY:** The Employment and Training Administration (ETA), U.S. Department of Labor (DOL or the Department), announces the availability of \$3,000,000 in grant funds for eligible “grassroots” organizations with the ability to connect to the local One-Stop

Delivery System. The term “grassroots” is defined under the Eligibility Criteria.

**SUPPLEMENTARY INFORMATION:** This solicitation provides background information on the Small Grassroots Organizations Connecting with the One-Stop Delivery System and critical elements required of projects funded under the solicitation. It also describes the application submission requirements, the process that eligible applicants must use to apply for funds covered by this solicitation, and how grantees will be selected. This announcement consists of eight parts.

- Part I provides background information on the Workforce Investment Act—Small Grassroots Organizations Connecting with the One-Stop Delivery System funding opportunity.
- Part II describes the size and nature of the anticipated awards.
- Part III describes the qualifications of an eligible applicant.
- Part IV provides information on the application and submission process.
- Part V explains the review process and rating criteria that will be used to evaluate applications.
- Part VI provides award administration information.
- Part VII contains ETA contact information.
- Part VIII contains other information for applicants.

#### Part I. Funding Opportunity Description

##### 1. Background

The Workforce Investment Act (WIA) reformed numerous federal job training programs with amendments impacting service delivery under other laws including 29 U.S.C. 49 *et seq.* the Wagner-Peyser Act, Adult Education and Family Literacy Act, 20 U.S.C. 9201 *et seq.*, and the Rehabilitation Act., 29 U.S.C. 701 *et seq.* WIA created a system of One-Stop Career Centers across the country. The intention of the One-Stop Career Center system is to establish a network of programs and providers in co-located and integrated settings that are accessible for individuals and businesses alike. There are currently over 1,800 comprehensive One-Stop Career Centers and over 1,400 affiliated One-Stop Career Centers across the United States. A number of other Federal programs are also identified as required partners in the One-Stop Career Center system to provide a comprehensive set of services for all Americans to access the information and resources available to help achieve their career goals. The WIA also established state and local Workforce

Investment Boards focused on strategic planning, policy development, and oversight of the workforce investment system, and accorded significant authority to the nation’s Governors and local chief elected officials to further implement innovative and comprehensive delivery systems. The vision, goals and objectives for workforce investment under the WIA decentralized system are fully described in the state strategic plan required under Section 112 of the statute. This state strategic workforce investment plan and the operational experience gained by all the partners to date in implementing the WIA-instituted reforms help identify the important “unmet needs” and latent opportunities to expand access to One-Stop Career Center systems by all the population segments within the local labor market.

States are currently developing their Strategic Plans for years three and four of the current five-year planning cycle. Plans from states with new governors are due to the Department by June 30, 2007 and plans from the other states are due by May 1, 2007.

##### 2. Administration Strategy

#### Engagement of Faith-Based and Community Organizations Under the Workforce Investment Act

On January 29, 2001, President George W. Bush issued Executive Order 13198, creating the Office for Faith-Based and Community Initiatives in the White House and centers for faith-based and community initiatives (CFBCI) in the federal Departments of Labor (DOL), Health and Human Services (HHS), Housing and Urban Development (HUD), Education (ED), and Justice (DOJ). President Bush charged the departmental centers with identifying statutory, regulatory, and bureaucratic barriers that stand in the way of the participation of effective faith-based and community organizations in providing human services, and to ensure, consistent with the law, that these organizations have equal opportunity to compete for federal funding and other support.

In early 2002, the CFBCI and ETA developed and issued an SGA to engage States, intermediary and grassroots organizations in workforce system-building. Further, ETA ensured that all solicitations were designed to include faith-based and community organizations as potential providers to deliver services and to strengthen their partnerships with the One-Stop Career Center system, while providing additional points of entry for customers into that system.

These solicitations proceeded from an ETA-CFBCI mutual premise that the involvement of faith-based and community organizations can both complement and supplement the efforts of local workforce investment systems in reaching our citizens and meeting their training, job and career-support needs. The 2002 grants realized from that initial competition embodied the Department's principal strategy for implementing the Executive Order by creating new avenues through which qualified organizations could participate more fully under the WIA, while applying their particular strengths and assets in providing customer services.

ETA and CFBCI continued with grant-making in 2003–2006 to enlist new “grassroots” organizations into workforce system-building; the new 2007 solicitation represents our continued commitment to bring additional organizations to that task, drawing on “lessons learned” during the last five years of grant operation. This new solicitation also incorporates several “promising practices” introduced by other ETA grantees during the same period. These lessons include the understanding that “grassroots” FBCOs provide personalized and holistic support to individuals while increasing their skill levels or seeking employment. FBCOs have close cultural connections to their communities and can help historically underserved populations access One-Stop services. The new solicitation also places significant emphasis on performance outcomes and documenting and quantifying the additional value services offered by the grassroots organization to the One-Stop Career Center system. Through this competition, ETA seeks to ensure that an important WIA tenet, the development of a talented American workforce pool through universal access to the programs and services offered under WIA, is further rooted in the customer-responsive delivery systems already established by the Governors, local elected officials and local Workforce Investment Boards. ETA also reaffirms its continuing commitment to those customer-focused reforms instituted by state and local governments, which help Americans access the tools they need to manage their careers throughout their life with information and high quality services, and to help U.S. companies find skilled workers to remain competitive. Many faith-based and community organizations offer unique services and support including networks for full partnership in mutual system-building

endeavors; they are trusted institutions within many poor neighborhoods; and they provide access to a large number of volunteers who bring the transformational power of personal relationships to the provision of services, and a sustained allegiance to the well-being and self-sufficiency of the participants they serve. Through their daily work and specific programs, these organizations share common purposes with government such as the attainment of occupational skills, and the entry and retention of all our citizens in good-paying jobs. Through this solicitation, ETA and CFBCI strive to leverage the programs, resources and committed staff of “grassroots” faith-based and community organizations into the workforce investment strategies already embodied in state and local strategic plans.

### 3. Project Objectives

The selected grantees will be expected to achieve the following objectives:

- Help unemployed or underemployed individuals with barriers to employment through (1) providing services that complement and support those offered by the identified One Stop Career Center, such as pre- and post-job placement mentoring, intensive case management, job retention support, life skills training and employability skills training; (2) connecting individuals with the existing training, apprenticeship and job opportunities of the One-Stop Career Center or other local affiliates of DOL's national business partners; and (3) providing post-job placement services to increase job retention.
- Expand the access of faith-based and community-based organizations' clients and customers to the training, job and career services offered by the local One-Stop Career Centers;
- Leverage volunteer hours and in-kind donations to maximize DOL's investment in grants to “grassroots” FBCOs;
- Thoroughly document the impact and outcomes of these grant investments through quarterly and final reporting; and
- Establish methods and mechanisms to ensure sustainability of these partnerships and participation levels beyond the life of the grant.

## Part II. Award Information

### 1. Award Amount and Other Information

ETA has identified \$3,000,000 for this solicitation. The agency expects to award approximately 40 grants. The grant amount for each “grassroots”

organization will range between \$50,000–\$75,000.

### 2. Period of Performance

The period of performance will be 18 months from the date of grant execution. This performance period shall include all necessary implementation and start-up activities as well as participant follow-up for performance outcomes and grant closeout activities. A timeline clearly detailing these required grant activities and their expected completion dates must be included in the grant application. If applied for and with significant justification, ETA may elect to exercise its option to award no-cost extensions to these grants for an additional period at its own discretion, based on the success of the program and other relevant factors. ETA reserves the right to provide additional funding in future years based on availability of funds and grantee performance (derived from the timely submission of required quarterly reports and completion of a limited application).

### 3. Anticipated Announcement and Award Dates

Announcement of these awards is expected to occur by June 30, 2007.

## Part III. Eligibility Information

### 1. Eligible Applicants

For purposes of this announcement, eligible “grassroots” organizations must be non-profit organizations that:

- Have an Internal Revenue Service 501(c)(3) status at the time of application submission.
- Have social services as a major part of their mission.
- Are headquartered in the local community to which they provide these services.
- Have a social services budget of \$500,000 or less.

**Please Note:** A social services budget includes all costs related to the provision of social services (including salaries and expenses). These services include those provided by a non-profit organization for the welfare of a person or community. Such services can include, but are not limited to housing, workforce development, employment readiness, education, child protection, food, clothing, shelter and health care.

If an applicant is an affiliate of a larger organization, to be eligible, the applicant must be located in local community to which they provide services, must have its own Federal tax identification number, have direct control of its funds and operates independently from the larger organization.

## 2. Matching Funds and Leveraged Resources

This solicitation does not require grantees to share costs or provide matching funds; however, applicants are encouraged to leverage resources whenever possible and the potential sustainability of the project will be considered in the evaluation of proposals.

**Please note:** If the proposal includes integrating WIA or other federal funds or includes other leveraged resources, these funds should not be listed on the SF 424 or SF 424A Budget Information Form, but should be described in the budget narrative and in Part II of the proposal.

## 3. Veterans Priority

This program is subject to the provisions of the "Jobs for Veterans Act," Public Law 107-288, which provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the Department of Labor. ETA Training and Employment Guidance Letter (TEGL) No. 5-03 (September 16, 2003), available at [http://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=1512](http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=1512), provides general guidance on the scope of the veterans priority statute and its effect on current employment and training programs.

## 4. Other Eligibility Requirements

**Distribution Rights.** Selected applicants must agree to give ETA the right to use and distribute all materials developed with grant funds such as training models, curriculum, technical assistance products, etc. Materials developed with grant resources are in the public domain; therefore, ETA has the right to use, reuse, modify, and distribute all grant-funded materials and products to any interested party, including broad distribution to the public workforce investment system via the Internet or other means.

**Legal rules pertaining to inherently religious activities by organizations that receive Federal financial assistance.** The government is generally prohibited from providing direct Federal financial assistance for inherently religious activities. See 29 CFR part 2; subpart D. Grants under this solicitation may not be used for religious instruction, worship, prayer, proselytizing, or other inherently religious activities. (Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of grant recipients and must be employed by grantees in the

selection of sub-recipients. ETA Training and Employment Guidance Letter (TEGL) No. 01-05 (July 6, 2005), available at [http://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=2088](http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2088), provides guidance on amendments to DOL regulations that permit the use, in defined circumstances, of Workforce Investment Act (WIA) Title I financial assistance for training and employment of WIA participants in religious activities.

## Part IV. Application and Submission Information

### 1. Addresses To Request Application Package

This announcement includes all information and links to forms needed to apply for this funding opportunity.

### 2. Content and Form of Application Submission

The proposal must consist of two (2) separate and distinct parts, Parts I and II. Applications that fail to adhere to the instructions in this section will be considered non-responsive and may not be given further consideration.

Part I of the proposal is the Cost Proposal and must include the following three items:

- The Standard Form (SF) 424, "Application for Federal Assistance" (available at <http://www.doleta.gov/sga/forms.cfm>). The SF 424 must clearly identify the applicant and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF 424 on behalf of the applicant shall be considered the authorized representative of the applicant.

All applicants for federal grant and funding opportunities are required to have a Dun and Bradstreet (DUNS) number. See Office of Management and Budget (OMB) Notice of Final Policy Issuance, 68 FR 38402 (June 27, 2003). Applicants must supply their DUNS number on the SF 424. The DUNS number is a nine-digit identification number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access this Web site: [www.dunandbradstreet.com](http://www.dunandbradstreet.com) or call 1-866-705-5711.

- The SF424A Budget Information Form, (available at <http://www.doleta.gov/sga/forms.cfm>).

- In preparing the Budget Information Form, the applicant must provide a concise narrative explanation to support the request. The budget narrative should break down the budget, and leveraged resources by the project activities

specified in the technical proposal and should discuss precisely how the administrative cost support the project goals.

**Please Note:** If the proposal includes integrating WIA or other federal funds or includes other leveraged resources, these funds should not be listed on the SF 424 or SF 424A Budget Information Form, but should be described in the budget narrative. Applicants that fail to provide a SF 424, SF 424A and/or a budget narrative will be removed from consideration prior to the technical review process. The amount of federal funding requested for the entire period of performance should be shown together on the SF 424 and SF 424A Budget Information Form. Applicants are also encouraged, but not required, to submit OMB Survey N. 1890-0014: Survey on Ensuring Equal Opportunity for Applicants, which can be found at <http://www.doleta.gov/sga/forms.cfm>.

**Please Note:** If awarded a grant, two representatives from each grantee organization will be required to attend one orientation conference in the Washington, DC, area. Grant funds may be used for this travel.

Part II of the application is the Technical Proposal. The Technical Proposal will demonstrate the applicant's capabilities to plan and implement the WIA-Small Grassroots Organizations Connecting with the One-Stop Delivery System grant project in accordance with the provisions of this solicitation. It sets forth a strategic plan for the use of awarded funds and establishes measurable goals for increasing organizational participation in the One-Stop Career Center system to serve more fully unemployed or underemployed individuals with barriers to employment. See Part V Applicant Review Information for required elements of the Technical Proposal. The Technical Proposal is limited to eight (8) double-spaced, single-sided, 8.5 inch x 11 inch pages with 12 point text font and one-inch margins. Any pages over the eight page limit will not be reviewed. Please note that applicants should not send letters of commitment, intent or support separately to ETA because incoming mail is tracked through a separate system and will not be attached to the application for review. Except for the discussion of any leveraged resources to address the evaluation criteria, no cost data or reference to prices should be included in the Technical Proposal. The following additional information is required and will not count against the 8 page Technical Proposal limitation:

- The applicant must submit an agreement with, or letter of intent from the Workforce Investment Board/One-Stop Career Center operator that

describes the One-Stop Center's firm commitment to entering a formal referral partnership with the applicant. This formal partnership should produce two-way client referrals from the One-Stop Center to the applicant and from the applicant to the One-Stop Center on which the applicant will be required to report. The letter must describe that the One-Stop operator has acknowledged that the applicant organization is complementing the services provided by the One-Stop Career Center. If an agreement with the One-Stop Career Center operator is not included, please provide an explanation of the efforts made to establish this partnership, (the One-Stop operator role is described in section 121 (b) (1) of the Workforce Investment Act.)

- A 1–2 page timeline outlining project activities, including expected start-up, implementation, participant follow-up for performance outcomes, grant closeout and other activities.

**Please note** That the agreements or letters of intent and timeline are not included in the Technical Proposal eight-page limit.

Applications may be submitted electronically on [www.grants.gov](http://www.grants.gov) or in hard copy via U.S. mail, professional delivery service, or hand delivery. These processes are described in further detail in Section IV (3). Applicants submitting proposals in hard-copy must submit an original signed application (including the SF 424) and one (1) "copy-ready" version, meaning free of bindings, staples or protruding tabs to ease in the reproduction of the proposal by DOL for project reviewers. Applicants submitting proposals in hard-copy are also requested, though not required, to provide an electronic copy of the proposal on CD-ROM.

### 3. Submission Dates and Times

The closing date for receipt of applications under this announcement is May 8, 2007. Applications must be received at the address below, or electronically received at the Web site below, no later than 4:00 p.m. (Eastern Time), except as identified in the "Late Applications" paragraph below. Applications sent by e-mail, telegram, or facsimile (fax) will not be honored. No exceptions to the mailing and delivery requirements set forth in this notice will be granted.

Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Eric Luetkenhaus, Reference SGA/DFA PY 06–11, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210.

Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand-delivered proposals will be received at the above address.

Applicants may apply online at <http://www.grants.gov> by the deadline specified above. Any application received after the deadline will not be accepted. For applicants submitting electronic applications via Grants.gov, please note that it may take several days to complete the "Get Started" step to register with Grants.gov. It is strongly recommended that these applicants immediately initiate the registration in order to avoid unexpected delays that could result in the disqualification of their application. If submitted electronically through <http://www.grants.gov>, applicants should save application documents as a .doc or .pdf file.

**Late Applications:** Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made, was properly addressed, and: (a) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications, (e.g., an application required to be received by the 20th of the month must be post marked by the 15th of that month) or (b) was sent by professional overnight delivery service, or successfully submitted on Grants.gov to DOL not later than one working day prior to the date specified for receipt of grant applications. It is highly recommended that online submissions be completed one working day prior to the date specified for receipt of applications to ensure that the applicant still has the option to submit by overnight delivery service in the event of any electronic submission problems. "Post marked" means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the package. Failure to adhere to the above instructions will be a basis for a determination of non-responsiveness. Evidence of timely submission by a professional overnight delivery service must be demonstrated by equally reliable evidence created by the delivery service provider indicating the time and place of receipt.

### 4. Intergovernmental Review

This funding opportunity is not subject to Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs."

### 5. Funding Restrictions

Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, e.g., Non-Profit Organizations—OMB Circular A–122 (2 CFR 230). Prospective grantees should read and become familiar with this Circular. Disallowed costs are those charges to a grant that the grantor agency or its representative determines not to be allowed in accordance with the applicable Federal Cost Principles or other conditions contained in the grant.

**Use of Stipends.** The provision of stipends to training enrollees for the purposes of wage replacement or supportive services, such as transportation costs, for unemployed or employed workers, is not an allowable cost under this solicitation.

**Purchase of Vehicles.** The purchase of vehicles is not an allowable cost under this solicitation.

**Indirect Costs.** As specified in OMB Circular Cost Principles, indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular cost objective. In order to utilize grant funds for indirect costs incurred, the applicant must obtain an Indirect Cost Rate Agreement with its Federal cognizant agency either before or shortly after the grant award.

**Administrative Costs.** Under this solicitation, "Small Grassroots Organizations Connecting with the One-Stop Delivery System", an entity that receives a grant to carry out a project or program may not use more than 10 percent of the amount of the grant to pay administrative costs associated with the program or project. Administrative costs could be both direct and indirect costs, and are defined at 20 CFR 667.220. Administrative costs do not need to be identified separately from program costs on the SF 424A Budget Information Form. They should be discussed in the budget narrative and tracked through the grantee's accounting system. To claim any administrative costs that are also indirect costs, the applicant must obtain an indirect cost rate agreement as described above.

### 6. Other Submission Requirements

**Withdrawal of Applications.** Applications may be withdrawn by written notice or telegram (including Mailgram) received at any time before

an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative signs a receipt for the proposal.

## Part V. Application Review Information

### 1. Evaluation Criteria

This section identifies and describes the criteria that will be used to evaluate grant proposals from Grassroots Organizations as defined in Section III (Eligibility Criteria). Below are the required elements of the Technical Proposal and the rating criteria that reviewers will use to evaluate the proposal under this SGA. A. Organizational History and Description of Community Need (15 points); B. Client Services, Partnerships with the One-Stop Career Center, and Timeline (50 points); C. Description of Outcomes and Tracking Methodology (30 points); D. Description of Sustainability (5 Points).

A. Organizational History and Description of Community Need (15 points)

1. Briefly, describe the history of how your organization has provided social or workforce development services to meet community needs, and include a brief listing of services provided. Please describe the community need that this grant will address. Please describe what populations you will serve. Populations can include but are not limited to such groups as: ex-offenders, immigrants, limited English-speakers, veterans, victims of violent crime, single working mothers, homeless persons, individuals living in specific low-income area and individuals with disabilities. (Census and other community data can be useful for determining the population.) Please describe what services your organization will provide to address the needs of this population using this grant funding. Services must include such activities as: pre- and post-job placement mentoring, intensive case management, job retention support, life skills training, and employability skills training and any other services as appropriate. Services must include some form of job retention support.

Scoring of this criterion will be based on the following.

1. Does the applicant demonstrate that it has a history of providing social and/or workforce development services to meet community needs? Were the target populations for this grant described adequately? Does the organization fully demonstrate that the services they will provide such as pre- and post-job placement mentoring, intensive case

management, job retention support, life skills training, and employability skills training services will address the community need and the needs of the target population? (15 points)

B. Client Services, Partnership With the One-Stop and Timeline (50 points)

1. *How Your Organization Will Serve Clients.* The applicant must describe how your organization will provide services under this grant, including post-job placement services. Please include a description of the specific program, curricula or method you will use. Describe the staff/volunteer positions that will provide services under this grant.

2. *Partnership With the One-Stop Career Center.* Please describe how you plan to coordinate your services with the existing job training and employment opportunities at the One-Stop Career Center to help the target population you described above receive services, enter employment, be retained in employment and see wage increases. Please also include if you will be connecting your customers with specific apprenticeship programs, business partners or training opportunities offered by or through the One-Stop Career Center. If you have not previously worked with a One-Stop Career Center, please describe actions you have taken to develop a relationship with a One-Stop Career Center. Information on the agreement with the Workforce Investment Board/One-Stop Career Center operator can be found in Part IV (2) of this solicitation.

3. *Timeline.* The applicant must attach a timeline of major, measurable tasks and activities to be undertaken, including those tasks that will be undertaken to create effective partnership with the One-Stop Career Center. (The timeline must be limited to 2 pages and does not count towards the 8 page limit.)

Scoring of this criterion will be based on the following.

1. Does the applicant adequately describe the methodology for providing services such as pre- and post-job placement mentoring, and employability skills training? Does the applicant adequately describe post-job placement services? Does a description of the methodology demonstrate that the organization will be successful in helping the target population described? (15 points)

2. Does the applicant demonstrate its ability to connect its clients with the services of the One-Stop Career Center and successfully partner with the One-Stop? (10 points) Does the applicant present evidence of a firm commitment

from the One-Stop Career Center system to create a formal referral partnership with the applicant as described above (e.g., a signed letter of intent from the Local Workforce Investment Board or other One-Stop delivery system principals)? (10 points)

3. Does the applicant fully demonstrate that the activities and tasks presented on the timeline are achievable given available resources? (15 points)

C. Description of Outcomes and Tracking Methodology (30 points)

1. The applicant must identify how many participants will be served by the grant funds. The applicant must also describe the measurable outcomes that the program participants will achieve over the life of this grant. Measurable outcomes must include how many participants will be placed in post-secondary education or advanced training; number of participants placed in a job; average hourly wages at the time of job placement; and of the participants placed in a job since the beginning of the grant, how many were continuously employed for 3 and 6 months (retention). Outcomes can also include other goals submitted with the grant application or additional goals developed for the program.

2. Describe what mechanisms you will develop, in partnership with the One-Stop Career Center system, to track your success in achieving proposed goals and outcomes, (i.e. performance measures). Describe any other methods you will use for evaluating your project's success.

Scoring of this criterion will be based on the following.

1. Does the applicant provide tangible outcome measures and goals that allow both the applicant and DOL to gauge the impact of the activities on meeting the community need? Do these goals include tracking employment outcomes and retention outcomes for those served? Does the applicant fully demonstrate that the number of people they plan to serve is reasonable? (15 points)

2. Does the applicant fully demonstrate that it developed, in conjunction with the One-Stop, mechanisms to track the goals and outcomes of the grant? (15 points)

D. Description of Sustainability (5 Points)

1. Describe how the applicant will work with the One-Stop and other community partners to ensure a sustainable relationship after the expiration of the grant. Describe efforts to leverage other federal, state, local or private funds to support the project

during or after the expiration of the grant.

Scoring of this criterion will be based on the following.

2. Does the applicant demonstrate the potential to have a commitment from the One-Stop Career Center and other community partners to continue their relationship after the expiration of the grant? Does the applicant fully describe a development plan that includes diverse funding sources for the future? (5 points)

## 2. Review and Selection Process

A technical review panel will make a careful evaluation of applications against the rating criteria. The ranked scores will serve as the primary basis for selection of applications for funding, in conjunction with other factors such as geographic balance, availability of funds and what is most advantageous to the Government. The grant officer reserves the right to award without negotiation. The criteria in Part V, Section 1 will serve as the basis upon which submitted applications will be evaluated. The panel results are advisory in nature and not binding on the Grant Officer, and the Grant Officer may consider any information that comes to his or her attention. Should a grant be awarded without negotiations, the award will be based on the applicant's signature on the SF 424, which constitutes a binding offer as signed by the applicant (including electronic signature via E-Authentication on [www.grants.gov](http://www.grants.gov)).

## Part VI. Award Administrative Information

### 1. Award Notices

All award notifications will be posted on the ETA homepage at <http://www.doleta.gov>.

### 2. Administrative and National Policy Requirements—Administrative Program Requirements

All grantees will be subject to all applicable Federal laws (including provisions in appropriations law), regulations, and the applicable Office of Management and Budget (OMB) Circulars. The applicants selected under the SGA will be subject to the following administrative standards and provisions, if applicable:

- The Workforce Investment Act of 1998, U.S.C. 2801 *et seq.*
- Workforce Investment Act Regulation codified at (20 CFR pts. 660–671).
- Exec. Order No. 13198, Agency responsibilities with respect to Faith-Based and Community Initiatives, 66 *FR* 8497 (Jan. 31, 2001).

- Training and Employment Guidance Letter 17–01, Incorporating and Utilizing Grassroots, Community-Based Organizations Including Faith-Based Organizations in Workforce Investment Activities and Programs (2002).

- Exec. Order No. 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, 67 *FR* 77141 (Dec. 16, 2002).

- New equal treatment regulations (29 CFR Part 2, Subpart D) and (ETA Training and Employment Guidance Letter (TEGL) No. 01–05 (July 6, 2005), available at [http://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=2088](http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2088)).

- Workforce Investment Act (WIA) nondiscrimination and programmatic regulations (29 CFR 37.6(f); 20 CFR 667.266 and 667.275).

- Non-Profit Organizations—Office of Management and Budget (OMB) Circulars A–122 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

- All entities must comply with 29 CFR Parts 93 and 98, and where applicable, 29 CFR Parts 96 and 99.

- In accordance with Section 18 of the Lobbying Disclosure Act of 1995, Public Law 104–65 (2 U.S.C. 1611) non-profit entities incorporated under Internal Revenue Code Section 501(c)(4) that engage in lobbying activities will not be eligible for the receipt of Federal funds and grants.

- 29 CFR Part 2, subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.

- 29 CFR part 30—Equal Employment Opportunity in Apprenticeship and Training.

- 29 CFR part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.

- 29 CFR part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

- 29 CFR part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor.

- 29 CFR part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor.

- 29 CFR part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

- 29 CFR part 37—Implementation of the Nondiscrimination and Equal

Opportunity Provisions of the Workforce Investment Act of 1998 (WIA).

**Note:** Except as specifically provided in this notice, ETA's acceptance of a proposal and award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedure. For example, the OMB Circulars require that an entity's procurement procedures must ensure that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, the ETA's award does not provide the justifications or basis to sole-source the procurement, i.e., avoid open and free competition, unless the activity is regarded as the primary work of an official partner to the application.

## Evaluation Requirements

DOL may require that the program or project participate in an evaluation of overall "Small Grassroots Organizations Connecting with the One-Stop Delivery System" performance. To measure the impact of grants funded under this SGA, DOL may arrange for or conduct an independent evaluation of the outcomes and benefits of the projects. Grantees must agree to make records on participants, employers, and funding available and to provide access to program operating personnel and to participants, as specified by the evaluator(s) under the direction of ETA, including after the expiration date of the grant.

## Reporting Requirements

As a condition of participation in the "Small Grassroots Organizations Connecting with the One-Stop Delivery System" project, successful applicants will be required to submit performance information as well as Quarterly Financial Reports, Progress Reports and Final Reports.

## Performance Requirements

"Small Grassroots Organization Connecting with the One-Stop Delivery System" grantees are required to report outcomes for the DOL common performance measures, which measure entry into employment, retention in employment, and earnings. Additional information on ETA's common measures policy can be found in Training Employment Guidance Letter No. 17–05, Common Measures Policy for the Employment and Training Administration's (ETA) Performance Accountability System and Related Performance Issues.

## Quarterly Financial Reports

A Quarterly Financial Status Report (SF 269) is required until such time as

all funds have been expended or the grant period has expired. Quarterly financial reports are due 30 days after the end of each calendar year quarter. Grantees must use ETA's Online Electronic Reporting System.

#### Quarterly Progress Reports

The grantee must submit a quarterly data and narrative progress report to the designated Federal Project Officer within 30 days after the end of each calendar year quarter. Copies are to be submitted electronically providing a detailed account of activities undertaken during that quarter. The Department may require additional data elements to be collected and reported on either a regular basis or special request basis. Grantees must agree to meet the Department's reporting requirements. Reports must include the following information for the grassroots grantees.

- The number of participants served per quarter (new/intake and total).
- The number of One-Stop Career Center clients referred to the grantee.
- Number of grantee participants referred to the One-Stop.
- The total number of volunteer hours committed to the grant program.
- Number of participants placed in post-secondary education or advanced training.
- Number of participants placed in a job.
- Average hourly wages at the time of job placement.
- Of the participants placed in a job since the beginning of the grant, how many were continuously employed for 3 months.
- Of the participants placed in a job since the beginning of the grant, how many were continuously employed for 6 months.
- Other goals submitted with the grant application or additional goals developed for the program.
- Demographic information.

#### Final Report

A draft final report must be submitted no later than 60 days prior to the expiration date of the grant. This report must summarize project activities, employment outcomes, and related results of the project, and should thoroughly document the project solution approach. After responding to ETA's questions and comments on the draft report, three copies of the final report must be submitted no later than the grant expiration date. Grantees must agree to use a designated format specified by the Department to prepare the final report.

#### Part VII. Agency Contacts

Any technical questions regarding this SGA should be faxed to Linda Forman at DOL, Fax number (202) 693-2705 (not a toll-free number). You must specifically address your fax to the attention of Linda Forman and should include the following: SGA/DFA PY 06-11, a contact name, fax, and telephone number.

**FOR FURTHER INFORMATION CONTACT:** Linda Forman, at (202) 693-3416 (not a toll-free number). This announcement is also being made available on <http://www.grants.gov>.

#### Part VIII. Other Information

*OMB Information Collection No. 1205-0458*

Expires September 30, 2009

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, attention: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503. **PLEASE DO NOT RETURN YOUR COMPLETED APPLICATION TO THE OMB. SEND IT TO THE ADDRESS PROVIDED IN PART IV (3) OF THIS SOLICITATION.** This information is being collected for the purpose of awarding a grant. The information collected through this "Solicitation for Grant Applications" will be used by the Department of Labor to ensure that grants are awarded to the applicant best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, information submitted in the respondent's application is not considered to be confidential.

#### Resources

DOL maintains a number of Web-based resources that may be of assistance to applicants. The Web page for the Department's Center for Faith-Based & Community Initiatives (<http://www.dol.gov/cfbci>) is a valuable source of background on this initiative.

America's Service Locator ([www.servicelocator.org](http://www.servicelocator.org)) provides a directory of our nation's One-Stop Career Centers. ETA maintains a Web page (<http://www.servicelocator.org/wibcontacts>), which contains contact information for the state and local Workforce Investment Boards. Applicants are encouraged to review "Understanding the Department of Labor Solicitation for Grant Applications and How to Write an Effective Proposal", which can be found at (<http://www.dol.gov/cfbci/sgabrochure.htm>). Applicants may also wish to review the current two-year Workforce Investment Act plan for the state in which they are located. Access to these plans may be found at <http://www.doleta.gov/usworkforce/WIA/planstatus.cfm>. For a basic understanding of the grants process and basic responsibilities of receiving Federal grant support, please see "Guidance for Faith-Based and Community Organizations on Partnering with the Federal Government", found at ([www.fbc.gov](http://www.fbc.gov)).

Signed at Washington, DC, this 30th day of March 2007.

**Eric D. Luetkenhaus,**

*Grant Officer, Employment and Training Administration.*

[FR Doc. E7-6306 Filed 4-4-07; 8:45 am]

**BILLING CODE 4510-FN-P**

#### DEPARTMENT OF LABOR

##### Occupational Safety and Health Administration

[Docket No. OSHA-2007-0026]

##### **Asbestos in General Industry; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements**

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comment.

**SUMMARY:** OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in its Asbestos in General Industry Standard (29 CFR 1910.1001). The Standard protects employees from the adverse health effects that may result from occupational exposure to Asbestos in General Industry, including asbestosis, an emphysema-like condition; lung cancer; mesothelioma; and gastrointestinal cancer.

**DATES:** Comments must be submitted (postmarked, sent, or received) by June 4, 2007.

**ADDRESSES: Electronically:** You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

**Facsimile:** If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

**Mail, hand delivery, express mail, messenger, or courier service:** When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA-2007-0026, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

**Instructions:** All submissions must include the Agency name and OSHA docket number for the ICR (OSHA-2007-0026). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

**Docket:** To read or download comments or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Jamaa N. Hill at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:** Jamaa N. Hill or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N-3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2222.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The basic purpose of the information collection requirements in the Standard is to document that employers in general industry are providing their employees with protection from hazardous asbestos exposure. Asbestos exposure results in asbestosis, an emphysema-like condition; lung cancer; mesothelioma; and gastrointestinal cancer.

Several provisions of the Standard specify paperwork requirements, including: Implementing an exposure monitoring program that notifies employees of their exposure monitoring results; establishing a written compliance program; and informing laundry personnel of the requirement to prevent release of airborne asbestos above the time-weighted average and excursion limit. Other provisions associated with paperwork requirements include: Maintaining records of information obtained concerning the presence, location, and quantity of asbestos-containing materials (ACMs) and/or presumed asbestos-containing materials (PACMs) in a building/facility; notifying housekeeping employees of the presence and location of ACMs and PACMs in areas they may contact during their work; posting warning signs demarcating regulated areas; posting signs in mechanical rooms/areas that employees may enter and that

contain ACMs and PACMs, informing them of the identity and location of these materials and work practices that prevent disturbing the materials; and affixing warning labels to asbestos-containing products and to containers holding such products. Additional provisions that contain paperwork requirements include: Developing specific information and training programs for employees; using information, data, and analyses to demonstrate that PACM does not contain asbestos; providing medical surveillance for employees potentially exposed to ACMs and/or PACMs, including administering an employee medical questionnaire, providing information to the examining physician, and providing the physician's written opinion to the employee; maintaining exposure monitoring records, objective data used for exposure determinations, and medical surveillance; making specified records (e.g., exposure monitoring and medical surveillance records) available to designated parties; and transferring exposure monitoring and medical surveillance records to the National Institute for Occupational Safety and Health (NIOSH) on cessation of business, if so requested by NIOSH.

These paperwork requirements permit employers, employees and their designated representatives, OSHA, and other specified parties to determine the effectiveness of an employer's asbestos-control program. Accordingly, the requirements ensure that employees exposed to asbestos receive all of the protection afforded by the Standard.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions to protect employees, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

OSHA is requesting OMB to extend its approval of the information collection requirements specified by the Standard on Asbestos in General Industry. The

Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB.

*Type of Review:* Extension of a currently approved collection.

*Title:* Asbestos in General Industry (29 CFR 1910.1001).

*OMB Number:* 1218-0133.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 243.

*Frequency:* Annually; semi-annually.

*Total Responses:* 65,048.

*Average Time per Response:* Varies from 5 minutes to maintain records to 1.5 hours for employees to receive training or medical evaluations.

*Estimated Total*

*Burden Hours:* 23,849.

*Estimated Cost (Operation and Maintenance):* \$1,625,143.

#### IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

(1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile; or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for this ICR (OSHA Docket No. OSHA-2007-0026). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled “ADDRESSES”). The additional materials must clearly identify your electronic comments by your full name, date, and docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627).

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through this website.

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 submit comments and access the docket is available at the website’s “User Tips” link. Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the Internet to locate docket submissions.

#### V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor’s Order No. 5-2002 (67 FR 65008).

Signed at Washington, DC on April 2, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

[FR Doc. E7-6367 Filed 4-4-07; 8:45 am]

BILLING CODE 4510-26-P

#### NUCLEAR REGULATORY COMMISSION

##### Tennessee Valley Authority Browns Ferry Nuclear Plant, Units 1, 2, and 3 Docket Nos. 50-259, 50-260, and 50-296 Exemption

###### 1.0 Background

The Tennessee Valley Authority (TVA, the licensee) is the holder of Facility Operating Licenses DPR-33, DPR-52, and DPR-68, which authorize operation of the Browns Ferry Nuclear Plant, Units 1, 2 and 3. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of three boiling-water reactors located in Limestone County in Alabama.

###### 2.0 Request/Action

On November 19, 1980, the Commission published a new Appendix R to Title 10 to the *Code of Federal Regulations* (10 CFR) Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). Section 50.48(a) requires that each operating nuclear power plant have a fire protection plan which satisfies General Design Criterion (GDC) 3, “Fire protection,” in Appendix A, “General Design Criteria for Nuclear Power Plants,” to 10 CFR Part 50. The approved fire protection plan is the plan

required to satisfy 10 CFR 50.48(a). Specific fire protection features deemed necessary to ensure this capability are delineated in Appendix R to 10 CFR Part 50. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies the requirements for a particular aspect of fire protection features at nuclear power plants. The Browns Ferry units are required to comply with the provisions of Sections III.G and III.J and III.O. Section III.G.2 of Appendix R to 10 CFR Part 50 requires that where cables or equipment of redundant trains of systems necessary to achieve and maintain hot shutdown conditions are located within the same fire area outside of primary containment, one of the following means of ensuring that one of the redundant trains is free of fire damage shall be provided:

a. Separation of cables and equipment and associated non-safety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier;

b. Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area; or

c. Enclosure of cable and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area;

By letter dated October 26, 2006, as supplemented by a letter dated January 11, 2007, the licensee requested a revision to an exemption from 10 CFR 50 Appendix R, III.G.2. For the items specified in this exemption request, the licensee has selected III.G.2.b as the option for compliance with Appendix R, Section II.G.2. The exemption involves allowing intervening combustibles materials, for example, fire hazards (480V reactor building (RB) vent boards 1B, 2B, and 3B; small panels in Units 1, 2, and 3, and 1-hour rated Thermo-Lag 330-1 electrical raceway fire barrier (ERFB) material), in the specified 20 feet of separation protected with fire detection and automatic water-based fire suppression between redundant safe-shutdown trains.

The redundant trains are separated by a horizontal distance of 20 feet with intervening combustibles in certain fire zones in the Units 1, 2, and 3 RBs.

Exemptions are requested from the requirements to provide 20 feet of separation, free of intervening

combustibles. The following is a list of those fire zone locations and intervening combustibles/fire hazards

present within a 20-foot spatial separation zone for redundant safe-shutdown trains:

• Unit 1 Fire Zone 1-1/1-2 .....	565' Elevation .....	480V (RB) Vent Board 1B.
• Unit 1 Fire Zone 1-1/1-2 .....	565' Elevation .....	1-LPLN-925-338 & 338A Process Radiation Monitor and Relay Panel.
• Unit 1 Fire Zone 1-1/1-2 .....	565' Elevation .....	Thermo-Lag on Conduits ES2625-II and ES2673-II.
• Unit 1 Fire Zone 1-3/1-4 .....	593' Elevation .....	Thermo-Lag on Conduits PP459-IA, PP460-IA, and ES125-I.
• Unit 1 Fire Zone 1-3/1-4 .....	593' Elevation .....	1-LPLN-925-0281A Fire Detection Panel.
• Unit 1 Fire Zone 1-3/1-4 .....	593' Elevation .....	1-LPLN-925-0315 Heat Detection Panel.
• Unit 2 Fire Zone 2-1/2-4 .....	565' Elevation .....	480V (RB) Vent Board 2B.
• Unit 2 Fire Zone 2-1/2-2 .....	565' Elevation .....	2-PWR-276-0007 480V Power Distribution Panel.
• Unit 2 Fire Zone 2-3/2-4 .....	593' Elevation .....	25-281A Fire Detection Panel.
• Unit 2 Fire Zone 2-3/2-4 .....	593' Elevation .....	25-316 Cable Tray Fire Detection Control.
• Unit 3 Fire Zone 3-1/3-2 .....	565' Elevation .....	480 V (RB) Vent Board 3B.
• Unit 3 Fire Zone 3-1/3-2 .....	565' Elevation .....	1-LPLN-925-336 & 336A Raw Cooling Water Effluent Radiation Monitor and Relay Panel.
• Unit 3 Fire Zone 3-1/3-2 .....	565' Elevation .....	1-LPLN-925-337 & 337A Process Radiation Monitor and Relay Panel.

To justify inclusion of intervening combustibles in RB fire areas, the licensee performed fire modeling to assess potential hazards using methodology from NUREG-1805, "Fire Dynamics Tools (FDTs) Quantitative Fire Hazard Analysis Methods for the U.S. Nuclear Regulatory Commission Fire Protection Inspection Program," December 2004. Enclosure 2 of the exemption request discussed the fire-risk analysis for the Units 1, 2, and 3 RBs.

TVA provided an assessment utilizing fire modeling to evaluate the fire hazards due to intervening combustibles between redundant cable trains in the RBs. In this fire modeling analysis, the licensee modeled fire in Unit 1 RB Elevation 565' in the 20-foot zone of separation between fire zones 1-1 and 1-2.<sup>1</sup> Specifically, 480V (RB) vent boards 1B, 2B, and 3B are located within the 20-foot zone of separation. The fire model uses a series of empirical correlations from NUREG-1805 to show the largest fire from a vertical low voltage electrical cabinet should not produce enough radiant energy to ignite the closest redundant cable trays or intervening combustibles within the redundant trains.

The analysis is used to determine the extent of the potential fire damage associated with a realistic worst case fire scenario between Unit 1 RB fire zones 1-1 and 1-2 and the anticipated failure of cables or equipment of redundant trains of systems required for safe-shutdown. A fire scenario was postulated for the Unit 1 RB, that is, fire started in a vertical electrical cabinet (480V RB vent board 1B). This cabinet has 12 vertical sections with no vent openings. The penetrations in the cabinet consist of sealed conduits on top

of the cabinet. The fire started from non-qualified Institute of Electronics and Electrical Engineering Standard (IEEE)-383 cables within the cabinet and was assumed to be limited to one cable bundle. The heat release rate (HRR)<sup>2</sup> used to calculate heat fluxes to the targets (cable trays located at radial distance of approximately 7 feet [17 feet above floor], conduits located at the bottom of the duct approximately 9 feet above the top of the cabinet, and Thermo-Lag 330-1 wrapped conduit located approximately 7 feet from the edge of the cabinet) was based on Table E-4 in Appendix E of NUREG/CR-6850 (EPRI [Electric Power Research Institute] TR-1019181), "EPRI/NRC-RES Fire PRA [Probabilistic Risk Analysis] Methodology for Nuclear Power Facilities," November 2005.

In order to evaluate the licensee's conclusion that a cabinet fire would not result in fire damage adversely affecting the safe-shutdown capability in Units 1, 2, and 3 RB located within the 20-foot separation area, the NRC staff identified areas in which additional information was necessary to complete its evaluation. The NRC staff had discussions with the licensee on November 20, 2006, concerning use of the HRR of a single bundle cable (vs. multiple bundles) fire from NUREG/CR-6850 in fire modeling. Specifically, the NRC staff requested TVA to justify how the single bundle cable HRR assumption bounds the worst case cabinet fire scenario. On January 11, 2007 (ADAMS Accession Number ML070160050), TVA

<sup>2</sup> HRR is the rate at which heat energy is generated by burning. The HRR of a fuel is related to its chemistry, physical form, and availability of oxidant. When an object burns, it releases a certain amount of energy per unit of time. For most materials, the HRR of a fuel changes with time, in relation to its chemistry, physical form, and availability of oxidant (air), and is ordinarily expressed as kW (kJ/sec) or Btu/sec and denoted by Q (1,000 kW = 1 MW or 1 BTU/sec = 1.055 kW).

provided a revised fire model to address the NRC concerns.

In the revised fire modeling analysis, the HRR for multiple-cable bundles was assumed due to multiple conduit entries in each section of the low voltage vertical cabinet. The HRR associated with multiple-cable bundles for a vertical cabinet with non-qualified IEEE-383 cables was based on Table E-5 in Appendix E of NUREG/CR-6850. The critical incident radiative heat flux<sup>3</sup> for ignition is calculated from the cabinet fire scenario to see if ignition of the redundant cables and adjacent surrounding targets (intervening combustibles) is possible. The critical incident radiative heat flux from the maximum fire HRR, that is, 816 Kilowatt (kW), was estimated at 4.28 kW/m<sup>2</sup>.

The licensee determined that the maximum radiant heat flux is not sufficient to ignite non-qualified IEEE-383 cable or Thermo-Lag 330-1 wrapped on conduits or safety-related cables or equipment of redundant trains of systems for safe-shutdown, nor to adversely impact any surrounding equipment. The targets require a large amount of radiative heat to ignite. The measured critical heat flux level for representative non-qualified IEEE-383 or thermoplastic cable samples typically is in the range of 6 kW/m<sup>2</sup> (NUREG/CR-6850, Appendix H, Table H-1). The measured critical heat flux for ignition for Thermo-Lag 330-1 ERFB material is 25 kW/m<sup>2</sup> based on American Society of Testing and Materials (ASTM) E1321, "Standard Test Method for Determining Material Ignition and Flame Spread

<sup>3</sup> The incident heat flux (the rate of heat transfer per unit area that is normal to the direction of heat flow—it is a total of heat transmitted by radiation, conduction, and convection) required to raise the surface of a target to a critical temperature is termed the critical heat flux. Below this heat flux an object will typically not ignite while above this heat flux the time to ignition will decrease with the increasing heat flux.

<sup>1</sup> The Units 2 and 3 configuration are very similar and the results of this analysis are applicable to 480V (RB) vent board 2B and 480V (RB) vent board 3B.

Properties'' (TVA October 26, 2006 (ADAMS ML063040310)).

Based on the above evaluation, the NRC staff concludes that the ability of Units 1, 2, and 3 to achieve and maintain safe-shutdown conditions in accordance with the requirements of Section III.G.2.b to Appendix R to 10 CFR 50 is not adversely affected by the inclusion of intervening combustibles or fire hazards in certain fire zones within Units 1, 2, and 3 RBs for the following reasons:

- The fire modeling performed by the licensee provides reasonable assurance that redundant safe-shutdown trains will be maintained free of fire damage. This is because the estimated heat flux from the maximum exposure fire is less than the critical heat flux for ignition for non-qualified IEEE-383 cable or Thermo-Lag 330-1 ERFB material.
- In the event of a postulated fire in the Units 1, 2, and 3 RBs, all units can safely shut down using the alternate shutdown panel located outside each RB. The Browns Ferry Nuclear Plant Appendix R alternate shutdown strategy is described in the approved fire protection plan.
- A significant fire is unlikely due to control of transient combustibles near the redundant trains. RB volume and height would dissipate heat from a cabinet fire and not threaten redundant trains. Smoke detectors and portable extinguishers were installed for quick fire detection and suppression. All electrical cabinets in the area of concern are enclosed with no ventilation openings and the bottom of the cable tray stacks have non-combustible covers.
- A fire originating in a low voltage cabinet exposing intervening combustibles/targets (cable trays located at radial distance of approximately 7 feet, conduits located at the bottom of the duct approximately 9 feet above the top of the cabinet (17 feet above floor), and Thermo-Lag 330-1 wrapped conduit located approximately 7 feet from the edge of the cabinet) would be slow to develop. Based on the fire detection arrangement in the Units 1, 2, and 3 RBs, detection of this type of fire would occur well before the fire had time to develop into a fully developed cable tray fire scenario.
- The NRC staff reviewed the physical configuration of the Units 1, 2, and 3 RBs, the associated fire hazards (intervening combustibles) and fire protection features, and fire response procedures. This review found that a fire that initiated in one of the

cabinets would likely be detected in its incipient stage, and fire-fighting activities initiated (including actuation of the automatic water-based fire suppression system) before the fire becomes fully developed, thereby limiting its potential to spread.

The NRC staff, therefore, finds the licensee's proposed exemption to permit intervening combustibles in the 20-foot separation zone for certain specified fire areas in the Units 1, 2, and 3 RBs acceptable.

The licensee indicated that all fire zones discussed previously are protected with fire detection and automatic pre-action sprinkler systems, manual fire extinguishers, and hose stations. If a fire were to occur in any of these locations it would be detected before significant flame propagation or increased temperature, radiative heat flux, and damaging smoke layering occurred. The fire brigade would then extinguish the fire using hose stations and manual fire fighting equipment. If rapid fire propagation occurred before the arrival of the fire brigade, one would expect the automatic pre-action sprinkler system to actuate and limit fire spread. Pending actuation of automatic pre-action sprinkler system, the physical separation of redundant trains is sufficient to provide reasonable assurance that one safe-shutdown train would remain free of fire damage. Therefore, the NRC staff concludes that the existing level of fire protection for the redundant safe-shutdown trains is an acceptable deviation from Section III.G.2 of Appendix R to 10 CFR Part 50.

### 3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. These include the special circumstances that the underlying purpose of the rule is satisfied by the requested revision to the exemption, since the existing fire protection features and analyses demonstrate that the quantity of intervening combustibles permitted in the 20-foot separation zone does not affect the ability of the existing fire protection features to provide an equivalent level of protection as required by 10 CFR 50, Appendix R, Section III.G.

### *Authorized by Law*

This exemption revision allows the existence of the specified intervening combustibles in the 20-foot separation zone identified previously. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR 50.48 and Appendix R to 10 CFR 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

### *No Undue Risk to Public Health and Safety*

The underlying purpose of 10 CFR 50.48 is to limit fire damage to structures, systems, and components (SSCs) important to safety so that the capability to shut down the plant safely is ensured. Compliance with the applicable provisions of Appendix R to Part 50 ensures that one train of cables and equipment necessary to achieve and maintain safe-shutdown are maintained free of fire damage. Based on the above, no new accident precursors are created by allowing the specified intervening combustibles into the 20-foot separation zone identified previously, thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

### *Consistent With Common Defense and Security*

The proposed exemption revision would allow the specified intervening combustibles into the 20-foot separation zone identified previously. This revision to the fire protection plan and existing exemptions has no relation to security issues. Therefore, the common defense and security are not impacted by this exemption.

### *Special Circumstances*

In accordance with 10 CFR 50.12(a)(2), special circumstances are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.48 is to limit fire damage to SSCs important to safety so that the capability to shut down the plant safely is ensured. Compliance with the applicable provisions of Appendix R to Part 50 ensures that one train of cables and equipment necessary to achieve and maintain safe-shutdown are maintained free of fire damage. As the existence of

the intervening combustibles should not affect the capability of the installed suppression and detection system to detect and mitigate a fire, the underlying purpose of 10 CFR 50.48 and Appendix R is achieved. Therefore, the special circumstances required by 10 CFR 50.12(a)(2) for the granting of an exemption from 10 CFR 50.48 and Appendix R to 10 CFR 50 exist.

#### 4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the revision to the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the TVA a revision to the exemption from the requirements of Section III.G.2 of Appendix R to 10 CFR 50 for the Browns Ferry Nuclear Plant, Units 1, 2 and 3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (22 FR 9036).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of March 2007.

For the Nuclear Regulatory Commission.

**Catherine Haney,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 07-1696 Filed 4-4-07; 8:45 am]

BILLING CODE 7590-01-P

#### UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

##### Sunshine Act Meeting; Notification of Item Added to Meeting Agenda

**DATE OF MEETING:** March 28, 2007.

**STATUS:** Closed.

**PREVIOUS ANNOUNCEMENT:** 72 FR 14312, March 27, 2007.

**ADDITION:** Proposed Filing with the Postal Regulatory Commission for an Extension of the Market Test for Repositionable Notes. At its closed meeting on March 28, 2007, the Board of Governors of the United States Postal Service voted unanimously to add this item to the agenda of its closed meeting and that no earlier announcement was possible. The General Counsel of the United States Postal Service certified that in her opinion discussion of this item could be properly closed to public observation.

**CONTACT PERSON FOR MORE INFORMATION:** Wendy A. Hocking, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-1000.

**Wendy A. Hocking,**

*Secretary.*

[FR Doc. 07-1717 Filed 4-3-07; 3:13 pm]

BILLING CODE 7710-12-M

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-27771]

##### Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

March 30, 2007.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of March 2007. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch (tel. 202-551-5850). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 25, 2007, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

*For Further Information Contact:* Diane L. Titus at (202) 551-6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549-4041.

##### The Preferred Group of Mutual Funds [File No. 811-6602]

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On June 19, 2006, each of applicant's series transferred its assets to the following corresponding funds, based on net asset value: T. Rowe Price Value Fund, Inc., T. Rowe Price Growth Stock Fund, Inc., T. Rowe Price Mid-Cap Growth Fund, Inc., T. Rowe Price New Horizons Fund, Inc., T. Rowe

Price Capital Appreciation Fund, T. Rowe Price International Funds, Inc., T. Rowe Price Short-Term Bond Fund, Inc., T. Rowe Price New Income Fund, Inc. and T. Rowe Price Summit Funds, Inc. Expenses of approximately \$490,000 incurred in connection with the reorganization were paid by Caterpillar Investment Management Ltd., applicant's investment adviser.

*Filing Dates:* The application was filed on July 20, 2006, and amended on October 30, 2006, January 12, 2007 and March 23, 2007.

*Applicant's Address:* 411 Hamilton Blvd., Suite 1200, Peroria, IL 61602.

##### AIM Floating Rate Fund [File No. 811-9797]

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On April 13, 2006, applicant transferred its assets to AIM Counselor Series Trust, based on net asset value. Expenses of \$238,190 incurred in connection with the reorganization were paid by A I M Advisors, Inc., applicant's investment adviser.

*Filing Date:* The application was filed on February 23, 2007.

*Applicant's Address:* 11 Greenway Plaza, Suite 100, Houston, TX 77046-1173.

##### Pioneer Balanced Fund [File No. 811-1605]

##### Pioneer America Income Trust [File No. 811-5516]

*Summary:* Each applicant seeks an order declaring that it has ceased to be an investment company. On November 10, 2006, each applicant transferred its assets to corresponding series of Pioneer Series Trust IV, based on net asset values. Expenses of \$80,698 and \$81,259, respectively, incurred in connection with the reorganizations were paid by each applicant, the acquiring fund, and Pioneer Investment Management, Inc., investment adviser to both applicants and the acquiring fund.

*Filing Date:* The applications were filed on March 5, 2007.

*Applicants' Address:* 60 State St., Boston, MA 02109.

##### Pioneer Europe Select Fund [File No. 811-10111]

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On June 24, 2005, applicant transferred its assets to Pioneer Europe Select Equity Fund, based on net asset value. Expenses of \$23,688 incurred in connection with the reorganization were paid by Pioneer Investment Management, Inc.,

investment adviser to both applicant and the acquiring fund.

*Filing Date:* The application was filed on March 5, 2007.

*Applicant's Address:* 60 State St., Boston, MA 02109.

**Pioneer Small Company Fund [File No. 811-7339]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On January 20, 2006, applicant transferred its assets to Pioneer Small Cap Value Fund, based on net asset value. Expenses of \$87,781 incurred in connection with the reorganization were paid by applicant, the acquiring fund, and Pioneer Investment Management, Inc., investment adviser to both applicant and the acquiring fund.

*Filing Date:* The application was filed on March 5, 2007.

*Applicant's Address:* 60 State St., Boston, MA 02109.

**BlackRock U.S. Government Fund [File No. 811-4077]**

**BlackRock Short Term U.S. Government Fund, Inc. [File No. 811-6304]**

*Summary:* Each applicant seeks an order declaring that it has ceased to be an investment company. On October 16, 2006, each applicant transferred its assets to corresponding series of BlackRock Funds, based on net asset value. Expenses of \$677,572 and \$238,614, respectively, incurred in connection with the reorganizations were paid by BlackRock, Inc., the parent company of applicants' investment adviser.

*Filing Dates:* The applications were filed on January 17, 2007, and amended on March 22, 2007.

*Applicants' Address:* BlackRock, Inc., 800 Scudders Mill Rd., Plainsboro, NJ 08536.

**BlackRock U.S. High Yield Fund, Inc. [File No. 811-8699]**

**Master U.S. High Yield Trust [File No. 811-10019]**

*Summary:* Applicants, a feeder fund and a master fund, respectively, in a master-feeder structure, seek an order declaring that each has ceased to be an investment company. On October 16, 2006, each applicant transferred its assets to the High Yield Bond Portfolio, a series of BlackRock Funds, based on net asset value. Expenses of \$237,309 and \$757, respectively, incurred in connection with the reorganizations were paid by BlackRock, Inc., the parent company of applicants' investment adviser.

*Filing Dates:* The applications were filed on January 17, 2007. BlackRock U.S. High Yield Fund, Inc. amended its application on March 16, 2007 and March 22, 2007. Master U.S. High Yield Trust amended its application on March 22, 2007.

*Applicants' Address:* BlackRock, Inc., 800 Scudders Mill Rd., Plainsboro, NJ 08536.

**Merrill Lynch Disciplined Equity Fund, Inc. [File No. 811-9299]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On August 28, 2006, applicant transferred its assets to BlackRock Large Cap Core Fund, a series of BlackRock Large Cap Series Fund, Inc., based on net asset value. Expenses of \$341,376 incurred in connection with the reorganization were paid by Merrill Lynch & Co. Inc., the parent company of applicant's investment adviser.

*Filing Dates:* The application was filed on January 17, 2007, and amended on March 22, 2007.

*Applicant's Address:* BlackRock, Inc., 800 Scudders Mill Rd., Plainsboro, NJ 08536.

**Pioneer Limited Maturity Bond Fund [File No. 811-6657]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On September 28, 2001, applicant transferred its assets to Pioneer Bond Fund based on net asset value. Expenses of \$76,677 incurred in connection with the reorganization were paid by Pioneer Investment Management, Inc., investment adviser for both applicant and the acquiring fund.

*Filing Dates:* The application was filed on July 2, 2002, and amended on March 5, 2007.

*Applicant's Address:* 60 State St., Boston, MA 02109.

**ACM Government Opportunity Fund, Inc. [File No. 811-5595]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On January 26, 2007, applicant transferred its assets to AllianceBernstein Income Fund, Inc., based on net asset value. Expenses of \$336,500 incurred in connection with the reorganization were paid by applicant.

*Filing Dates:* The application was filed on February 27, 2007, and amended on March 21, 2007.

*Applicant's Address:* 1345 Avenue of the Americas, New York, NY 10105.

**AIM Combination Stock & Bond Funds [File No. 811-8066]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On July 18, 2005, applicant transferred its assets to corresponding portfolios of AIM Equity Funds and AIM Funds Group, based on net asset value. Expenses of \$535,700 incurred in connection with the reorganization were paid by A I M Advisors, Inc., applicant's investment adviser.

*Filing Date:* The application was filed on February 23, 2007.

*Applicant's Address:* 11 Greenway Plaza, Suite 100, Houston, TX 77046-1173.

**Sentinel Pennsylvania Tax-Free Trust [File No. 811-4781]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On October 27, 2006, applicant transferred its assets to Federated Pennsylvania Municipal Income Fund, a series of Federated Municipal Securities Income Trust, based on net asset value. Expenses of \$16,810 incurred in connection with the reorganization were paid by Sentinel Asset Management, Inc., applicant's investment adviser, and Federated Investors, Inc., the acquiring fund's investment adviser.

*Filing Dates:* The application was filed on February 13, 2007, and amended on March 13, 2007.

*Applicant's Address:* One National Life Drive, Montpelier, VT 05604.

**Bailard Opportunity Fund Group, Inc. [File No. 811-6146]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On April 3, 2006, applicant transferred its assets to corresponding series of HighMark Funds, based on net asset value. Expenses of \$949,000 incurred in connection with the reorganization were paid by Bailard, Inc., applicant's investment adviser, and HighMark Capital Management, Inc., the acquiring fund's investment adviser.

*Filing Dates:* The application was filed on January 3, 2007, and amended on March 13, 2007.

*Applicant's Address:* 950 Tower Lane, Suite 1900, Foster City, CA 94404.

**Smith Barney Fund of Stripped Zero U.S. Treasury Securities [File No. 811-4324]**

**Smith Barney Fund of Stripped Zero Coupon U.S. Treasury Securities [File No. 811-4583]**

*Summary:* Each applicant, a unit investment trust, seeks an order

declaring that it has ceased to be an investment company. On November 16, 2004, each applicant made its final liquidating distribution, based on net asset value. Applicants incurred no expenses in connection with the liquidations.

**Filing Dates:** The applications were filed on February 27, 2007, and amended on March 19, 2007.

**Applicants' Address:** 388 Greenwich St., New York, NY 10013.

#### **Liberty-Stein Roe Advisor Trust [File No. 811-7955]**

**Summary:** Applicant seeks an order declaring that it has ceased to be an investment company. On July 27, 2002, applicant transferred its assets to Stein Roe Young Investor Fund, a series of Liberty-Stein-Roe Funds Investment Trust, based on net asset value. Expenses of \$274,163 incurred in connection with the reorganization were paid by SteinRoe & Farnham Incorporated, applicant's investment adviser.

**Filing Date:** The application was filed on February 20, 2007.

**Applicant's Address:** One Financial Center, Boston, MA 02111.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-6373 Filed 4-4-07; 8:45 am]

**BILLING CODE 8010-01-P**

#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-55549; File No. SR-CHX-2007-02]

#### **Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change To Amend the CHX Fee Schedule on a Retroactive Basis To Clarify the Application of a Credit Against Specialist Fixed Fees**

March 28, 2007.

#### **I. Introduction**

On February 12, 2007, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its Schedule of Participant Fees and Credits ("Schedule") on a

retroactive basis to clarify application of a monthly specialist fixed fee credit. The proposed rule change was published for comment in the **Federal Register** on March 12, 2007 for a 15-day comment period.<sup>3</sup> The comment period ended on March 27, 2007. The Commission received no comments on the proposal. This order grants accelerated approval of the proposed rule change.

#### **II. Description of the Proposal**

The Exchange proposes to amend its Schedule on a retroactive basis to clarify application of a monthly specialist fixed fee credit. Beginning November 2006, the Exchange instituted a monthly specialist fixed fee credit of \$25,000, to be applied while the Exchange completed implementation of its new trading model and issues were transitioned from being traded by CHX specialists to a market maker model.<sup>4</sup> This proposal clarifies that the Exchange intended that the credit would be applied on a cumulative basis for November and December of 2006, so that the November credit would be \$25,000 and the December credit would be \$50,000. In addition, the Exchange intended that the credit for January would be reduced to \$25,000. Because SR-CHX-2006-37 did not clearly indicate that the credit would be applied on a cumulative basis for the months of November and December and subsequently reduced for the month of January, the CHX submitted the instant proposed rule change to clarify the total amount of the specialist fixed fee credit available for each month: \$25,000 for November 2006; \$50,000 for December 2006; and \$25,000 for January 2007.

#### **III. Discussion and Commission Findings**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> Specifically, the Commission believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>6</sup> which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among members

<sup>3</sup> See Securities Exchange Act Release No. 55408 (March 6, 2007), 72 FR 11068.

<sup>4</sup> See Securities Exchange Act Release No. 55070 (January 9, 2007), 72 FR 2049 (January 17, 2007) (SR-CHX-2006-37).

<sup>5</sup> In approving the 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).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

and issuers and other persons using any facilities or system which it operates or controls.

This proposed rule change would clarify the application of a specialist fixed fee credit that the CHX is offering as an incentive for CHX specialists while the CHX completed its transition to a new market maker trading model. The proposed rule change would reconcile the discrepancy between the manner in which the CHX intended to apply the credit and the description of the credit in SR-CHX-2006-37. The proposal would also clarify that the credit was reduced to \$25,000 for the month of January 2007.

The Commission finds good cause for approving the proposed rule change prior to the 30th day of the date of publication of the notice thereof in the **Federal Register**. The proposed rule change clarifies ambiguity about the application of the specialist fixed fee credit. The Commission believes accelerated approval will provide clarity without delay. Therefore, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act, to approve the proposed rule change on an accelerated basis.

#### **IV. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-CHX-2007-02) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-6374 Filed 4-4-07; 8:45 am]

**BILLING CODE 8010-01-P**

#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-55560; File No. SR-ISE-2007-23]

#### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an ISE Stock Exchange Fee Waiver**

March 29, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 27, 2007, the International Securities

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Exchange, LLC ("ISE" 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. 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 ISE is proposing to amend its Schedule of Fees to extend a fee waiver related to the ISE Stock Exchange ("ISE Stock"). The text of the proposed rule change is available at <http://www.iseoptions.com> and 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 purpose of this proposed rule change is to extend a fee waiver related to the trading of equity securities on ISE Stock, a facility of the Exchange. The Exchange currently waives all execution fees in an effort to promote trading on ISE Stock.<sup>3</sup> The fee waiver is scheduled to expire on April 1, 2007.<sup>4</sup> In an effort to continue the promotion of ISE Stock, the Exchange proposes to extend the waiver of all execution fees until May 1, 2007.

##### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)<sup>5</sup> that the Exchange provide for the equitable allocation of reasonable dues, fees, and

other charges among its members and issuers and other persons using its facilities.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and Rule 19b-4(f)(2) thereunder,<sup>7</sup> because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2007-23 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2007-23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2007-23 and should be submitted on or before April 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E7-6371 Filed 4-4-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55557; File No. SR-ISE-2006-78]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval of Proposed Rule Change Relating to the Facilitation Mechanism

March 29, 2007.

On December 13, 2006, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>3</sup> See Securities Exchange Act Release No. 54561 (October 2, 2006), 71 FR 59844 (October 11, 2006).

<sup>4</sup> See Securities Exchange Act Release No. 55427 (March 8, 2007), 72 FR 12644 (March 16, 2007).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> to amend ISE Rule 716(d) to allow an Electronic Access Member ("EAM") to execute a transaction through the Exchange's Facilitation Mechanism wherein the EAM has solicited interest from other parties to execute against a block-sized order it represents as agent, in addition to facilitating such orders with orders from the EAM's proprietary account. The proposed rule change was published for comment in the **Federal Register** on February 12, 2007.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>4</sup> and, in particular, the requirements of Section 6(b)(5) of the Act.<sup>5</sup> Specifically, the Commission believes that the proposed rule change is consistent with the Act because it is a reasonable modification designed to provide additional flexibility for the Exchange's members to obtain block-sized executions on behalf of their customers. The Commission notes that Supplementary Material .01 to ISE Rule 716 provides that the use of the Facilitation Mechanism does not alter a member's best execution duty to obtain the best price for its customer. The Commission also notes that Supplementary Material .05 to ISE Rule 716 requires that any solicited contra orders entered by Exchange members to trade against agency orders may not be for the account of an ISE market maker that is assigned to the options class.<sup>6</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-ISE-2006-78) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-6377 Filed 4-4-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55559; File No. SR-NYSE-2005-03]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 3 to and Order Granting Accelerated Approval of Proposed Rule Change, as Amended Related to Exchange Rule 325 (Capital Requirements for Member Organizations) and Rule 326 (Growth Capital Requirement, Business Reduction Capital Requirement, Unsecured Loans and Advances)

March 29, 2007.

#### I. Introduction

On January 5, 2005, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> the proposed rule change relating to Exchange Rules 325 and 326. The NYSE filed Amendment No. 1 to the proposed rule change on February 13, 2006. The NYSE filed Amendment No. 2 to the proposed rule change on March 17, 2006.<sup>3</sup> The proposed rule change was published in the **Federal Register** on August 8, 2006.<sup>4</sup> The Commission received one comment on the proposal.<sup>5</sup> On February 1, 2007, the Exchange filed Amendment No. 3 to the proposed rule change.<sup>6</sup>

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> In Partial Amendment No. 2 ("Amendment No. 2"), the Exchange clarified the application of proposed amendments to NYSE Rule 326 to make explicit the ability of the Exchange to restrict the growth or business of a member organization, respectively, when its tentative net capital declines below the early warning notification amount required by the Exchange Act Rule 15c3-1(a)(7)(ii).

<sup>5</sup> Exchange Act Release No. 54255 (July 31, 2006), 71 FR 45086 (August 8, 2006).

<sup>6</sup> See Partial Amendment No. 3 dated February 1, 2007 ("Amendment No. 3"). Amendment No. 3 proposed amended language to Rules 325 and 326 to add an early warning notification more restrictive than Commission/CFTC requirements. The text of Amendment No. 3 is available at the NYSE, the

This order provides notice of Amendment No. 3 to the proposed rule change and approves the proposed rule change as amended on an accelerated basis.

#### II. Description of the Proposal

The proposed rule change consists of amendments to Rule 325 and Rule 326 to reflect Commission amendments under the Exchange Act, including amendments to Exchange Act Rule 15c3-1 that established an alternative method of computing net capital for broker-dealers, and to reflect amendments to Commodity Futures Trading Commission rules ("CFTC") under the Commodities Exchange Act<sup>7</sup> with respect to minimum net capital requirements for futures commission merchants.<sup>8</sup>

The Commission's net capital rule, Exchange Act Rule 15c3-1, imposes minimum financial requirements on broker-dealers.<sup>9</sup> To help insure that broker-dealers maintain sufficient liquid assets to satisfy promptly the claims of customers and cover potential market and credit risks, the net capital rule requires broker-dealers to maintain different minimum levels of capital based upon the nature of their business and whether they handle customer funds or securities.

On June 8, 2004, the Commission adopted rule amendments under the Exchange Act, including amendments to Exchange Act Rule 15c3-1, that established a voluntary, alternative method of computing net capital for certain large broker-dealers that are part of consolidated supervised groups referred to as consolidated supervised entities ("CSEs").<sup>10</sup> Under the Commission amendments, a broker-dealer may use this alternative method only if its ultimate holding company agrees to compute group-wide allowable capital and allowances for market, credit, and operational risk in accordance with the standards adopted by the Basel Committee on Banking Supervision, and consents to group-wide Commission supervision. The alternative method of computing net capital permits a broker-dealer to use

Commission's Public Reference Room, and <http://www.nyse.com>.

<sup>7</sup> 7 U.S.C. 1 et seq.

<sup>8</sup> The CFTC rules became effective on September 30, 2004. See 69 FR 49784 (Aug. 12, 2004). The Commission also recently proposed amendments to Exchange Act Rule 15c3-1 and Rule 17a-11 to conform provisions of its net capital rule to the CFTC amendments. See Exchange Act Release No. 54575 (October 5, 2006), 71 FR 60636 (October 13, 2006).

<sup>9</sup> 17 CFR 240.15c3-1.

<sup>10</sup> Exchange Act Release No. 49830 (June 8, 2004), 69 FR 34425 (June 21, 2004).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 55236 (February 2, 2007), 72 FR 6633.

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> The Exchange confirmed that, in addition to orders solicited pursuant to paragraph (e) of ISE Rule 716, the last sentence of Supplement .05 to ISE Rule 716 also applies to orders solicited pursuant to paragraph (d) of ISE Rule 716. Telephone conversation on March 28, 2007 between Joseph Ferraro, Associate General Counsel, ISE and Jennifer Dodd, Special Counsel, Division of Market Regulation, Commission.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

models, such as “value-at-risk” (“VAR”) models and scenario analysis, which are already part of its internal risk management control system to calculate the market risk and derivatives-related credit risk components of its net capital requirement. The deduction for market risk calculated using internal models replaces the traditional “haircut” approach to calculating net capital.<sup>11</sup>

In 2004, the CFTC amended Rule 1.17 and adopted certain new “risk-based” capital requirements applicable to futures commission merchants.<sup>12</sup> CFTC Rule 1.17, as amended, requires a futures commission merchant to maintain adjusted net capital equal to a specific percentage of the margin required to be collected under exchange or clearing organization rules for positions carried in customer and noncustomer accounts.<sup>13</sup>

When NYSE member firms allow their net capital to decline below certain levels, the firms risk non-compliance with the requirements of Exchange Act Rule 15c3-1. NYSE Rules 325 and 326 are designed to alert the Exchange before such problems occur, and to enable the Exchange to prevent membership non-compliance by restricting the business activities of any member organization whose net capital falls below certain defined levels.

#### *Proposed Amendment to NYSE Rule 325*

Rule 325, the Exchange’s primary net capital rule, requires NYSE member firms to comply with Exchange Act Rule 15c3-1 and imposes additional requirements to ensure such compliance. Rule 325(b) requires a member organization to notify the Exchange if its net capital falls below certain percentages. The proposed amendments to Rule 325(b)(1) reflect recent changes to the CFTC rules with respect to risk-based capital requirements for futures commission merchants. The proposed amendments conform Rule 325 to these CFTC rule changes.<sup>14</sup>

In addition, the proposed amendments also add Rule 325(b)(3), which would require a member organization to provide concurrently to the Exchange a copy of any report or notification made to the Commission pursuant to Exchange Act Rule 17a-

11<sup>15</sup> or CFTC Rule 1.12.<sup>16</sup> The NYSE stated that this new requirement is necessary to help ensure that the Exchange continues to receive timely notification of potential violations of Exchange Act Rule 15c3-1, including the rule’s CSE provisions. Therefore, because CFTC Rule 1.12 requires notification by any futures commission merchant that experiences a decline in net capital below the CFTC’s early warning levels, the Exchange will continue to receive notification if a member organization acting as futures commission merchant is in danger of violating CFTC minimum capital requirements.

#### *Proposed Amendments to NYSE Rule 326*

NYSE Rule 326, which enables the Exchange to restrict a member organization’s business activities if its net capital falls below certain defined levels, uses a two-step approach to preventing membership non-compliance with Exchange Act Rule 15c3-1. First, Rule 326(a) allows the Exchange to prohibit a member organization from expanding its business if its net capital falls below specified levels. Second, if a member organization’s net capital falls below lower, specified levels, Rule 326(b) allows the Exchange to compel it to reduce its existing business. To enable the Exchange to regulate its membership proactively (that is, to act if a member or member organization is in danger of violating Exchange Act Rule 15c3-1, rather than waiting until Exchange Act Rule 15c3-1 has been violated), the levels specified in NYSE Rule 326 are higher than those contained in Exchange Act Rule 15c3-1.

The proposed amendments would add language to provide minimum tentative net capital<sup>17</sup> and net capital levels for the Exchange to use when prohibiting, under Rule 326(a), the expansion of business by a member organization using the alternative method of computing net capital under the Commission’s CSE rules. The proposed amendments also conform the rule language with respect to member organizations registered as futures commission merchants to the CFTC rule amendments regarding risk-based capital requirements.

The NYSE stated that the levels proposed in Rule 326(a) for CSE firms (50 percent of the tentative net capital

level that triggers Commission notification or a net capital level of less than \$1.25 billion) would not unduly restrict a member organization’s business, but would allow the Exchange, after evaluating a member organization’s financial condition, to use the disincentive of restricted business expansion to encourage necessary corrective action by a member organization whose net capital has fallen to levels that risk violation of Exchange Act Rule 15c3-1.

The Exchange also proposes to amend Rule 326(a) to require a futures commission merchant to restrict its business activities during any period in which its net capital is less than 120 percent of the minimum risk-based capital requirements of CFTC Rule 1.17.

The Exchange also proposes to amend Rule 326(b) to provide minimum tentative net capital and net capital levels for the Exchange to use in requiring a CSE firm to reduce its business pursuant to Rule 326(b). The Exchange stated that the levels proposed in Rule 326 (40 percent of the tentative net capital level that triggers Commission notification or net capital of less than \$1 billion) would not unduly restrict a member organization’s business, but would allow the Exchange, after evaluating a member organization’s financial condition, to use the disincentive of mandatory business reduction to encourage necessary corrective action by a member organization whose net capital has fallen to levels that risk violation of Exchange Act Rule 15c3-1.

The proposed rule changes to Rule 326(b) also would require a member organization to reduce its business if its net capital falls below 110 percent of the minimum capital requirements of CFTC Rule 1.17 (the same level that triggers notification to the CFTC under CFTC Rule 1.12). Therefore, the Exchange will retain the ability to compel a member organization to reduce its business if its net capital falls to levels that may violate CFTC minimum capital requirements.

The Exchange also proposed rule amendments to Rules 326(c) and (d) to reflect the CFTC rule amendments with respect to risk-based capital requirements for futures commission merchants. These proposed rules amendments are parallel to the proposed changes to Rules 326(a) and (b), respectively.

Finally, the proposed rule amendments contain proposed language changes to renumber certain paragraphs and other non-substantive changes.

<sup>11</sup> The “haircut” approach to computing net capital involves reducing the value of firms’ proprietary securities by pre-determined percentages to allow for potential reductions in market value. See paragraph (c)(2)(vi) of Rule 15c3-1.

<sup>12</sup> See *supra* note 8.

<sup>13</sup> 17 CFR 1.17.

<sup>14</sup> See *supra* note 8; see also 17 CFR 1.17.

<sup>15</sup> 17 CFR 240.17a-11.

<sup>16</sup> 17 CFR 1.12.

<sup>17</sup> “Tentative net capital” is defined in the CSE rules as net capital before deductions for market and credit risk. See Exchange Act Rule 15c3-1(c)(15).

### III. Summary of Comment Received

The Commission received one comment letter to the proposed rule change.<sup>18</sup> The commenter supported prompt implementation of the proposal and commented specifically on the proposed changes to NYSE Rule 431(e). The NYSE, however, deleted this proposed paragraph in Amendment No. 3, and determined to proceed with the proposed rule change addressing amendments to NYSE Rules 325 and 326 only. No specific comments were received with respect to the proposed amendments to these rules.

### IV. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and comment letter and finds that the proposed rule change is consistent with the requirements of Section 6(b)(5)<sup>19</sup> of the Exchange Act, which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.<sup>20</sup>

The Commission believes that the proposed amendments are consistent with the requirements of Section 6(b)(5) of the Act in that they align the language in Rules 325 and 326 to reflect the Commission amendments to Rule 15c3-1 with regard to the alternative method of computing net capital for broker-dealers and they incorporate the CFTC rule amendments for NYSE member firms registered as futures commission merchants.

NYSE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of Amendment No. 3 in the **Federal Register**. The Commission notes that the proposal, as modified by Amendment Nos. 1 and 2, was published for notice and comment,<sup>21</sup> and that the Commission received one comment letter.<sup>22</sup> In Amendment No. 3, NYSE made proposed changes to NYSE Rules 325 and 326 to make conforming changes to CFTC early warning requirements for futures commission merchants and determined not to proceed with

amendments to Rule 431(e).<sup>23</sup> Accordingly, the Commission does not believe that Amendment No. 3 raises any new or novel issues. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change, as amended.

### V. 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2005-03 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-2005-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NYSE.

### VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> that the proposed rule change (SR-NYSE-2005-03), as amended, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>25</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-6311 Filed 4-4-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55555; File No. SR-NYSE-2007-09]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change as Modified by Amendments No. 1 and 2 Thereto Relating to Rule 18 (Compensation in Relation to System Failure)

March 29, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 26, 2007, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange filed Amendments No. 1 and 2 to the proposal on February 1, 2007, and March 28, 2007, respectively. The Commission is publishing this notice to solicit comment 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 is proposing to adopt Rule 18, "Compensation in Relation to Exchange System Failure," which will provide a form of compensation to member organizations when a loss is sustained in relation to an Exchange system failure. The Exchange further proposes to amend Rule 134 ("Differences and Omissions-Cleared Transactions ("QTs")) to require that profits equal to or greater than \$5,000 gained in relation to an Exchange system failure be remitted to the Exchange to be included in funds available for distribution pursuant to proposed Rule 18.

The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the

<sup>18</sup> See *supra* note 5.

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> In approving the proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>21</sup> See *supra* note 4.

<sup>22</sup> See *supra* note 5.

<sup>23</sup> The CFTC rules became effective on September 30, 2004. See 69 FR 49784 (Aug. 12, 2004).

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of and basis for the proposed rule change. 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 is a self-regulatory organization ("SRO") as that term is defined under the Act.<sup>3</sup> In its capacity as a SRO the Exchange functions as a quasi-governmental authority and is therefore entitled to immunity from lawsuits.<sup>4</sup> NYSE Rule 17 provides that the "Exchange shall not be liable for any damages sustained by a member, allied member or member organization growing out of the use or enjoyment by such member, allied member or member organization of the facilities afforded by the Exchange, except as provided in the rules."

The Exchange proposes to adopt Rule 18, "Compensation in Relation to Exchange System Failure," in order to establish a procedure to compensate member organizations in relation to Exchange system failures. The Exchange recognizes that the current industry practice of exchanges that function as SROs is to provide a form of compensation for losses sustained in relation to the use of the company's systems. As such, the Exchange seeks to adopt NYSE Rule 18 in order to conform to current industry practice.

#### a. Claims for Compensation

Pursuant to the proposed rule, an Exchange system failure is defined as a malfunction of the Exchange's physical equipment, devices, and/or programming which results in an incorrect execution or no execution of an order that was received in Exchange systems. Misuse of Exchange systems

and delays in order processing as a result of large volume or other capacity issues, commonly known as "queuing," are not considered Exchange system failures.

In order for a member organization to be eligible to receive payment for a claim, it must incur a net loss equal to or greater than \$5,000. That is, the loss must total \$5,000 after any profits received in relation to the same incident are subtracted. Claims must be submitted on a per incident basis. Member organizations are not permitted to aggregate losses incurred as a result of more than one system failure in order to satisfy the \$5,000 minimum claim requirement.

In addition to the minimum claim requirement, member organizations are required to informally notify the Exchange's Division of Floor Operations of a suspected Exchange system failure by the opening of the next business day following an incident. Formal written notice of the suspected Exchange system failure must be provided to the Exchange's Division of Floor Operations no later than end of the third business day after the incident.

Once in receipt of a claim, the Exchange's Division of Floor Operations will verify that: (i) A valid order was accepted into Exchange's systems; and (ii) an Exchange system failure occurred during the execution or handling of that order. If all of the criteria for submitting a claim have been met, the claim will be qualified for processing with all other eligible claims at the end of the calendar month in which the incident occurred.

#### b. Exchange Funds Available for Claims

Pursuant to proposed Rule 18, the Exchange will allot \$500,000 each calendar month ("Monthly Allotment") to be used for payments to member organizations that qualify for compensation under the Rule. The Monthly Allotment constitutes the initial amount to be contributed by the Exchange to provide compensation in relation to Exchange system failures for each calendar month regardless of the total dollar amount of claims eligible for payment. The Monthly Allotments do not aggregate, and except as set forth below, the Monthly Allotment for each calendar month is \$500,000. In the event that less than \$250,000 of the Monthly Allotment is paid out for a given calendar month, \$50,000 of that month's remaining Monthly Allotment ("Supplemental Allotment") will be added to a supplemental fund available for payment in subsequent calendar months. For example, if during the first full calendar month of operating under proposed NYSE Rule 18, the total

amount paid to member organizations is \$100,000, leaving \$400,000 remaining from the original Monthly Allotment, the following month, the Exchange will allot the Monthly Allotment of \$500,000 and an additional \$50,000 will be carried over from the previous calendar month's remaining balance for a total of \$550,000 eligible for payment to member organizations in the second calendar month.

This Supplemental Allotment will only be used to pay claims after the Monthly Allotment is exhausted. If claims are satisfied by the Monthly Allotment, the Supplemental Allotment, or any unused portion thereof, will be carried forward every month. Every month that does not pay out more than \$250,000 of the Monthly Allotment will result in a Supplemental Allotment to the subsequent Monthly Allotment as described above. If in any calendar month the amount of funds required to pay eligible claims of member organizations is equal to or exceeds \$250,000 of the Monthly Allotment, no Supplemental Allotment will be added to the Monthly Allotment for the subsequent calendar month.

The Exchange shall determine what, if any, maximum dollar amount may accrue over time as part of the Supplemental Allotment. Any and all Exchange determinations as to a maximum dollar amount that may accrue over time as part of the Supplemental Allotment shall be formally reflected in the text of Rule 18. In addition, after a few years of Rule 18's implementation, Exchange management intends to review both the maximum dollar amount, if any, which may be accrued as part of the Supplemental Allotment and the Monthly Allotment to determine whether they are appropriate. The Exchange understands that it would be required to file a proposed rule change should Exchange management determine to establish or change any maximum dollar amount for the Supplement Allotment or to modify the amount of the Monthly Allotment.<sup>5</sup>

#### c. Other Funds Available for Payment of Claims

In addition to the Monthly Allotment and Supplemental Allotment, the Exchange proposes to amend Exchange Rule 134.40 to provide that any error transactions in a member organization's account in relation to an Exchange system failure which results in a profit

<sup>3</sup> See 15 U.S.C. 78c(a)(26).

<sup>4</sup> See *DL Capital Group, LLC v. Nasdaq Stock Market, Inc.*, 409 F.3d 93, 99 (2d Cir. 2005); *D'Alessio v. New York Stock Exchange, Inc.*, 258 F.3d 93, 104-05 (2d Cir. 2001).

<sup>5</sup> Telephone conversation between Deanna Logan, Director, Office of the General Counsel, NYSE, and Nathan Saunders, Special Counsel, Division of Market Regulation ("Division"), Commission, on March 29, 2007.

equal to or greater than \$5,000 must be remitted to the Exchange ("Profit Contribution"). Profit Contributions will be added to the Monthly Allotment and any Supplemental Allotment.

Currently, pursuant to Exchange Rule 134.40, member organizations must report certain profits to the Exchange, but are not required to remit any part thereof to the Exchange. The Exchange proposes to amend Rule 134.40 to require that profits equal to or greater than \$5,000 gained in relation to an Exchange system failure be remitted to the Exchange in order to be applied to payments to member organizations pursuant to proposed NYSE Rule 18.

The Profit Contribution will operate similarly to the Supplemental Allotment in that it will only be used for payments after all other funds are exhausted (*i.e.*, Monthly Allotment and any Supplemental Allotment). In the event that the payments to member organizations are satisfied by the Monthly Allotment and any Supplemental Allotment, then the Profit Contribution will carry over each subsequent calendar month until required for the payments of eligible claims.

#### d. Compensation Payments to Claimants

In order to review qualified claims and administer payments, the Exchange will establish a panel consisting of three (3) Floor Governor and three (3) Exchange employees (the "Compensation Review Panel"). The Compensation Review Panel will meet and review all the claims that are submitted for a calendar month in order to determine: (i) If each claim satisfies all the criteria for payment; and (ii) the amount to be paid on the claim ("approved claims").

As part of its determination, the Compensation Review Panel must review the actions of the member organization and its employees before and after the error occurred in order to determine if any of the claimant's actions contributed to the loss sustained. The Compensation Review Panel may increase or reduce the amount deemed eligible for payment as a result of its review. All decisions by the Compensation Review Panel are final.

The determinations of the Compensation Review Panel will be by majority vote. In the event of deadlock, all relevant information about the claim will be sent to the Chief Executive Officer of the Exchange ("CEO") or the President or his or her designee who will make a final determination. Like the determinations of the Compensation

Review Panel, all the determinations of the CEO are final.

Once each claim is reviewed and the amount to be paid on each approved claim is decided, the Compensation Review Panel will total the dollar amount of all approved claims for the calendar month under review. If the total dollar amount of approved claims is less than the Monthly Allotment, then the claims will be paid to the claimants in full. If the total amount of approved claims exceeds the Monthly Allotment, then any Supplemental Allotment and/or Profit Contribution will be added to the Monthly Allotment in order to satisfy approved claims. In the event that the approved claims for a month exceed the sum of the Monthly Allotment, the Supplemental Allotment (if any), and the Profit Contribution (if any), then the approved claims will be paid out to member organizations based upon the proportion that each eligible claim bears to the total amount of all approved claims.

#### e. Retroactivity of Proposed Rule 18

The Exchange further requests to have proposed NYSE Rule 18 function retroactively. Specifically, the Exchange seeks to allow member organizations to submit claims to the Exchange for any alleged Exchange system failures that occurred between September 1, 2006 and the date of Commission approval of the proposed rule. After Commission approval, all other claims must be submitted as prescribed by the rule. The Monthly Allotment will be set aside for each calendar month in the period for which Rule 18 is retroactively effective.<sup>6</sup> However, the Supplemental Allotment and Profit Contribution provisions of the rule will not be retroactive, but will begin to accrue the month after Commission approval of proposed Rule 18 in accordance with provisions governing those funds.

#### 2. Statutory Basis

The Exchange's basis under the Act<sup>7</sup> for this proposed rule change is the requirement under Section 6(b)(5)<sup>8</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to

and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

#### 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

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 Exchange consents, the Commission will:

(A) By order approve the 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2007-09 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2007-09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use

<sup>6</sup> Telephone conversation between Deanna Logan, Director, Office of the General Counsel, NYSE, and Nancy Sanow, Assistant Director, and Nathan Saunders, Special Counsel, Division, Commission, on March 7, 2007.

<sup>7</sup> 15 U.S.C. 78a.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2007-09 and should be submitted on or before April 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-6376 Filed 4-4-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55564; File No. SR-NYSEArca-2007-17]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Waive Certain Listing Fees for Dually-Listed Issuers Who Delist During 2007

March 30, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 6, 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, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this

notice to solicit comments on the proposal 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 waive 2007 listing fees for any companies who, as of January 1, 2007, were dually listed on NYSE Arca Equities, on the one hand, and another national securities exchange, on the other hand, and have provided notice by June 30, 2007 to NYSE Arca Equities of their intention to voluntarily withdraw from listing on NYSE Arca. The NYSE Arca schedule of listing fees will be amended to note that, for those issuers dually listed on NYSE Arca Equities on January 1, 2007 and who have given notice by June 30, 2007 to NYSE Arca Equities of their intention to voluntarily withdraw from listing on NYSE Arca (and in fact withdraw during 2007), the 2007 annual listing fees will be waived.

The text of the proposed rule change is available on the Exchange's Web site (<http://www.nysearca.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, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange, through NYSE Arca Equities, proposes to waive 2007 listing fees for any companies who, as of January 1, 2007, were dually listed on NYSE Arca Equities, on the one hand, and another national securities exchange, on the other hand, and have provided notice by June 30, 2007 to NYSE Arca Equities of their intention to voluntarily withdraw from listing on NYSE Arca. The NYSE Arca schedule of listing fees will be amended to note that,

for those issuers dually listed on NYSE Arca Equities on January 1, 2007 who have given notice by June 30, 2007 to NYSE Arca Equities of their intention to voluntarily withdraw from listing on NYSE Arca (and in fact withdraw during 2007), the 2007 annual listing fees will be waived.

Effective January 1, 2007, the annual listing fees for all companies listed on NYSE Arca Equities were increased.<sup>3</sup> Many of the issuers still dually listed on NYSE Arca Equities on January 1, 2007 had indicated to the Exchange their intention to voluntarily withdraw from NYSE Arca. However, because of the dually listed issuers' administrative or governance processes, some of these dually listed issuers were unable to complete the withdrawal process before the new fees became effective. In this instance, the Exchange believes that it is appropriate to waive the 2007 listing fees for issuers dually listed on NYSE Arca Equities as of January 1, 2007 who have given notice by June 30, 2007 of their intention to voluntarily withdraw during 2007 and in fact withdraw during 2007.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act<sup>4</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>5</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

<sup>3</sup> See Securities Exchange Act Release No. 54007 (June 16, 2006), 71 FR 36155 (June 23, 2006) (SR-NYSEArca-2006-16).

<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2007-17 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-2007-17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at

the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2007-17 and should be submitted on or before April 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-6372 Filed 4-4-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55553; File No. SR-Phlx-2007-23]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Phlx Rule 607 and the XLE Fee Schedule

March 29, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 20, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been substantially prepared by the Phlx. The Phlx has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 Phlx proposes to amend Phlx Rule 607,<sup>5</sup> Covered Sale Fee, and the

XLE Fee Schedule to include sale transactions that are routed through the Exchange's routing facility. The Exchange also proposes to clarify and update the language in Phlx Rule 607 and on the XLE Fee Schedule that relates to the routing of orders over the NMS Linkage Plan.

This proposal is scheduled to become effective for transactions settling on or after March 20, 2007. The text of the proposed rule change is available at the Exchange, on the Exchange's Web site at [www.phlx.com](http://www.phlx.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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Currently, pursuant to Phlx Rule 607, each Phlx member and member organization engaged in executing sale transactions on the Exchange or executing transactions on another exchange or on a Participant in NASD's Alternative Display Facility ("ADF Participant"), which were routed over the NMS Linkage Plan, pays a Covered Sale fee equal to (i) The Section 31 fee rate multiplied by (ii) the member's aggregate dollar amount of covered sales.<sup>6</sup>

A sale transaction may now be routed through the Exchange's outbound routing facility,<sup>7</sup> which is not covered

Exchange's Form 19b-4 filing. Specifically, the Exchange did not include two references to the "Intermarket Trading System" that were contained in the third paragraph of Rule 607 (the third paragraph of the rule is not affected by this proposed rule change). These two references have subsequently been deleted as part of another immediately effective proposed rule change (see File No. SR-Phlx-2007-31), filed on March 27, 2007.

<sup>6</sup> The term "Covered Sale fee" describes the fee that Phlx imposes to recover what it owes pursuant to Section 31 of the Act (15 U.S.C. 78ee). Other exchanges may use different terms to describe the same fee (e.g., "Activity Assessment Fee" or "Sales Value Fee").

<sup>7</sup> See Phlx Rule 185(g).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> The Commission notes that the text of Phlx Rule 607 was incorrectly reflected in Exhibit 5A of the

by the language set forth above. The Exchange's outbound routing facility sends outbound orders to an away market broker for execution on an away market. Any covered sale type-fee assessed by an away market and incurred by the away market broker is then passed back to Phlx for payment, through the Exchange's outbound routing facility. This proposal inserts language to reflect that sale transactions may be routed over the Exchange's routing facility. Also, the proposed language reflects that the Covered Sale fee may be collected by the Exchange for these transactions to help the Exchange recover the amounts paid to other exchanges.

Additionally, the Exchange proposes to delete the reference to transactions routed over the NMS Linkage Plan, as it is no longer applicable. As discussed above, the Exchange has contracted with its outbound routing facility to route the Exchange's outbound orders. Thus, these orders are no longer routed outbound through the NMS Linkage Plan. Deleting the language relating to outbound routing over the NMS Linkage Plan will update Phlx Rule 607 and the XLE Fee Schedule to reflect the Exchange's current outbound routing practices. The provisions of Phlx Rule 607 pertaining to arrangements with other exchanges remain unchanged because the Exchange accepts orders routed inbound through the NMS Linkage Plan.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>9</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received by the Exchange.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and paragraph (f)(2) of Rule 19b-4<sup>11</sup> thereunder because it establishes a due, fee, or other charge applicable only to a member. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2007-23 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-Phlx-2007-23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference

Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2007-23 and should be submitted on or before April 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-6375 Filed 4-4-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55558; File No. SR-Phlx-2007-25]

### **Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Exchange's Automated Opening System**

March 29, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 20, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Phlx. The Phlx has filed the proposed rule change as one effecting a change in an existing order-entry or trading system of a self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(5) thereunder,<sup>4</sup> 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 Phlx proposes to amend Exchange Rule 1017, Openings in

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(5).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

Options, to provide for a delay in the automated opening of an option series for up to five seconds when the conditions for opening the option series have been satisfied, and following: (1) Respecting equity options, the dissemination of an opening quote or trade in the primary market for the underlying security; or (2) respecting index options, following the dissemination of a quote or trade by the primary markets for underlying securities constituting 100% of the index value. The text of the proposed rule change is available at Phlx, the Commission's Public Reference Room, and [www.Phlx.com/exchange/phlx-rule-fil.html](http://www.Phlx.com/exchange/phlx-rule-fil.html).

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The purpose of the proposed rule change is to help Exchange specialists, Streaming Quote Traders ("SQTs"),<sup>5</sup> and Remote Streaming Quote Traders ("RSQTs")<sup>6</sup> to better manage their market risk by delaying the opening of an option series for a brief interval following the dissemination of an opening trade or quote in the underlying security. Thus, specialist, SQTs and RSQTs would be able to price options series accurately on the opening.

<sup>5</sup> An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. See Exchange Rule 1014(b)(ii)(A).

<sup>6</sup> An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

Currently, the Exchange's systems immediately open a series when the following conditions are satisfied:

(i) The Exchange has received market orders, or the book is crossed (highest bid is higher than the lowest offer) or locked (highest bid equals the lowest offer); and either:

(ii)(A) The specialist's quote has been submitted;

(B) The quotes of at least two Phlx XL participants<sup>7</sup> have been submitted within two minutes of the opening trade or quote on the primary market for the underlying security; or

(C) If neither the specialist's quote nor the quotes of two Phlx XL participants have been submitted within two minutes of the opening trade or quote on the primary market for the underlying security, one Phlx XL participant has submitted their quote.

Once these conditions are satisfied, the system will automatically open the series immediately upon the dissemination of an opening trade or quote in the primary market for the underlying. The proposed rule change would delay the opening of an option series for up to five seconds from the dissemination of an opening quote or trade in the primary market for the underlying security or, respecting index options, following the dissemination of a quote or trade by the primary markets for underlying securities constituting 100% of the index value. The time period would apply uniformly to all options traded on the Exchange.

Experience with the automated opening system has shown that specialists, SQTs, and RSQTs frequently do not have an adequate opportunity to adjust their pre-opening quotes to accurately reflect the price of the underlying security when the underlying trade or quote is disseminated. As a result, the option series may be priced incorrectly at the opening, which places Exchange specialists, SQTs and RSQTs at market risk on the opening.

The delay (which time period would be determined by the Exchange and disseminated to membership via an Exchange circular) should enable Exchange specialists, SQTs and RSQTs to better manage this market risk and to maintain fair and orderly markets by pricing options series accurately on the opening.

<sup>7</sup> Phlx XL participants include specialist, SQT, RSQT, and non-SQT ROTs who are required to submit continuous two-sided electronic quotations pursuant to Exchange Rule 1014(b)(ii)(E). See Exchange Rule 1017(A).

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by enabling Exchange specialists, SQTs and RSQTs to better manage their risk, thus providing fair and orderly markets and correct options pricing on the opening of a series, all to the benefit of customers and the marketplace as a whole.

#### 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 not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change effects a change in an existing order-entry or trading system of a self-regulatory organization that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not have the effect of limiting the access to or availability of the system. Therefore, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(5)<sup>11</sup> thereunder. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(5).

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](mailto:rule-comments@sec.gov). Please include File No. SR-Phlx-2007-25 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2007-25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2007-25 and should be submitted on or before April 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-6378 Filed 4-4-07; 8:45 am]

**BILLING CODE 8010-01-P**

## DEPARTMENT OF STATE

### [Public Notice 5743]

#### **Bureau of Educational and Cultural Affairs (ECA); Request for Grant Proposals: Edmund S. Muskie Graduate Fellowship Program**

*Announcement Type:* New Cooperative Agreement.

*Funding Opportunity Number:* ECA/A/E/EUR-08-01.

*Catalog of Federal Domestic Assistance Number:* 00.000.

*Key Dates:* Application Deadline: June 1, 2007.

*Executive Summary:* The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for the administration of the FY 2008 Edmund S. Muskie Graduate Fellowship Program (Muskie Program). Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3) may submit proposals to administer the selection, placement, monitoring, evaluation, follow-on, and alumni activities for the Edmund S. Muskie Graduate Fellowship Program (Muskie Program). Organizations with less than four years experience in conducting international exchange programs are not eligible for this competition.

The Muskie Program selects outstanding citizens from Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Ukraine, Uzbekistan, Tajikistan and Turkmenistan (herein referred to as Eurasia) to receive fellowships for Master's level study in the United States in the fields of business administration, economics, law, public administration, and public policy. Candidates from countries other than Russia and Ukraine will be also considered in additional fields of education, environmental management, international affairs, library and information science, journalism/mass communications, and public health per guidelines outlined in the Project Objectives, Goals, and Implementation (POGI). Muskie Program fellows will be enrolled in graduate degree, certificate, and non-degree programs lasting one to two academic years. Funding should support a minimum of 145 fellows for Master's level fellowships under the FY 2008 program. Every effort should be made to maximize the number of awards granted.

## I. Funding Opportunity Description

### *Authority*

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries \* \* \*; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations \* \* \* and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through Fulbright-Hays legislation.

### *Purpose*

The Muskie Program is designed to promote mutual understanding, build democracy and foster the transition to market economies in Eurasia through intensive academic study and professional training. The academic component of the program will begin in the fall semester of academic year 2008-2009. Fellows may participate in a nine, twelve, eighteen, or twenty-four month academic program leading to a Master's degree. Fellows also take part in an eight to twelve week internship during the summer following the first academic year, with an option for a second internship following the second year of study. At the end of their designated academic and/or internship programs, fellows are required to return immediately to their home countries.

Applicant organizations must demonstrate the ability to administer all aspects of the Muskie Program—recruitment, selection, university placements, orientation, monitoring and support of FY 2008 fellows including all logistics, financial management, evaluation, follow-on, and alumni. Applicant organizations must demonstrate the ability to recruit and select a diverse pool of candidates from various geographic regions in Eurasia. The cooperating organization will serve as the principal liaison with Muskie Program host institutions for the Bureau. Further details on specific program responsibilities can be found in the Project Objectives, Goals, and Implementation (POGI), which is part of the formal solicitation package. Interested organizations should read the entire **Federal Register** announcement

<sup>12</sup> 17 CFR 200.30-3(a)(12).

for all information prior to preparing proposals.

The Bureau will award one cooperative agreement for this program. Should an applicant organization wish to work with other organizations in the implementation of this program, the Bureau requests that a sub-grant agreement be developed. The same requirements apply to the sub-grantee as to the grantee organization.

In a cooperative agreement, the Office of Academic Exchange Programs, European and Eurasian Branch (ECA/E/E/ EUR) is substantially involved in program activities above and beyond routine grant monitoring. ECA/A/E/ EUR activities and responsibilities for this program are as follows:

1. Participating in the design and direction of program activities;
2. Approval of key personnel;
3. Approval and input for all program agendas and timelines;
4. Providing guidance in execution of all project components;
5. Monitoring the target goal for number of participants and expenditure of funds toward meeting that goal;
6. Providing guidance on content and speakers for workshops;
7. Assisting with SEVIS-related issues;
8. Assistance with participant emergencies;
9. Providing background information related to participants' home countries and cultures;
10. Providing liaison with Public Affairs Sections of the U.S. Embassies and country desk officers at the State Department;
11. Providing ECA evaluation mechanisms.

## II. Award Information

*Type of Award:* Cooperative Agreement.

ECA's level of involvement in this program is listed under number I above.

*Fiscal Year Funds:* 2008.

*Approximate Total Funding:* \$8,500,000, pending availability of FY 2008 funds.

*Approximate Number of Awards:* 1.

*Ceiling of Award Range:* \$8,500,000.

*Anticipated Award Date:* Pending availability of funds, October 1, 2007.

*Anticipated Project Completion Date:* 06/30/2011.

*Additional Information:* Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

## III. Eligibility Information

### III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

### III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A-110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

### III.3. Other Eligibility Requirements

Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to \$60,000 in Bureau funding. ECA anticipates awarding one grant, in an amount up to \$8,500,000, to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

## IV. Application and Submission Information

**Note:** Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

### IV.1. Contact Information To Request an Application Package

Please contact the Office of Academic Exchange Programs, ECA/A/E/ EUR, Room 246, U.S. Department of State, SA-44, 301 4th Street, SW., Washington, DC 20547, (202) 453-8522, fax: (202) 453-8520, e-mail: [iovinems@state.gov](mailto:iovinems@state.gov) to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E/ EUR-08-01 located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from Grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Bureau Program Manager Micaela Iovine and refer to the Funding Opportunity Number ECA/A/E/ EUR-08-01 located at the top of this announcement on all other inquiries and correspondence.

### IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at <http://exchanges.state.gov/education/rfgps/menu.htm>, or from the Grants.gov Web site at <http://www.grants.gov>.

Please read all information before downloading.

### IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access <http://www.dunandbradstreet.com> or call 1-866-705-5711. Please ensure that your DUNS number is included in the appropriate box of the SF-424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa. The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR Part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The Grantee will be responsible for issuing DS-2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at <http://exchanges.state.gov> or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD-SA-44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203-5029, Fax: (202) 453-8640.

Please refer to Solicitation Package for further information.

IV.3d.2. Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural

life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into your proposal. Public Law 104-319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106-113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation. Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program outputs and outcomes. Outputs are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. Outcomes, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.
2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

**Please note:** Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation

findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. Awards may not exceed \$8,500,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. A comprehensive narrative must accompany the budget, clearly explaining all proposed costs (staff salaries and time on task must be supported by appropriate documentation and certified as true and accurate representations of actual costs and percentage of task).

The Bureau encourages applicant organizations to provide maximum levels of cost sharing and funding from private sources in support of its programs.

IV.3e.2. Allowable costs for the program include the following:

- (1) Program Expenses
- (2) Domestic Administration
- (3) Overseas Administration

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

*Application Deadline Date:* 06/01/2007.

*Reference Number:* ECA/A/E/EUR 08-01.

*Methods of Submission:* Electronic and Hard Copy.

*Applications may be submitted in one of two ways:*

- (1) In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or
- (2) electronically through <http://www.grants.gov>.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF-424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping

identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

**Important Note:** When preparing your submission please make sure to include one extra copy of the completed SF-424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and eight copies of the application should be sent to:

U.S. Department of State, SA-44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/EUR 08-01, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants submitting hard-copy applications must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassies for their review.

IV.3f.2.—Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (<http://www.grants.gov>). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system. Please follow the instructions available in the "Get Started" portion of the site (<http://www.grants.gov/GetStarted>).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, 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 not wait until the application deadline to begin the submission process through Grants.gov.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800-518-4726, Business Hours: Monday-Friday, 7 a.m.-9 p.m. Eastern Time, E-mail: [support@grants.gov](mailto:support@grants.gov).

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will not notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Optional—IV.3f.3. You may also state here any limitations on the number of applications that an applicant may submit and make it clear whether the limitation is on the submitting organization, individual program director or both.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

## V. Application Review Information

### V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for

Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

#### Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Development and Management:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Objectives should be reasonable, feasible, and flexible. Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

2. *Multiplier Effect/Impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

3. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. *Institutional Capacity and Record:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology used to link outcomes to original project objectives is recommended.

6. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and

honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

## VI. Award Administration Information

### VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

### VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A-122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A-21, "Cost Principles for Educational Institutions."

OMB Circular A-87, "Cost Principles for State, Local and Indian Governments."

OMB Circular No. A-110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A-133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

<http://www.whitehouse.gov/omb/grants>.  
<http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI>.

### VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) 10 interim reports for the Muskie Graduate Fellowship Program.

Financial reports must adhere to the quarterly reporting requirements mandated by Congress and be submitted quarterly. Please note that all program and financial reports should be sent to the Grants Division.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

### Program Data Requirements

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

## VII. Agency Contacts

For questions about this announcement contact: Program Manager Micaela Iovine, Office of Academic Exchange Programs, ECA/A/E/ EUR, Room 246, Reference Number: ECA/A/E/ EUR-08-01, U.S. Department of State, SA-44, 301 4th Street, SW., Washington, DC 20547, (202) 453-8522, fax: (202) 453-8520, e-mail: [iovinems@state.gov](mailto:iovinems@state.gov).

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/ EUR-08-01. Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may

not discuss this competition with applicants until the proposal review process has been completed.

### VIII. Other Information

#### Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: March 27, 2007.

**Dina Habib Powell,**

*Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E7-6360 Filed 4-4-07; 8:45 am]

BILLING CODE 4710-05-P

## DEPARTMENT OF STATE

### [Public Notice 5744]

#### **Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Fulbright Program Offices, Russia, and Kyiv, Ukraine**

*Announcement Type:* New Grant.

*Funding Opportunity Number:* ECA/A/E/EUR-08-02.

*Catalog of Federal Domestic Assistance Number:* 00.000.

*Application Deadline:* Friday, June 1, 2007.

*Executive Summary:* The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for organizations to serve as the fiscal disbursing agent and to provide administrative support for the Fulbright Program Offices in Moscow, Russia, and in Kyiv, Ukraine. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to provide these services to one or both Offices (Moscow and/or Kyiv). A separate proposal must be submitted for each country's office, *i.e.*, organizations that apply for both the Moscow and Kyiv Offices must submit two discrete proposals for addressing the particular budgetary guidelines and any other country-specific requirements for each Office outlined in the RFGP.

### I. Funding Opportunity Description

#### Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries \* \* \*; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations \* \* \* and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

#### Overview

The Fulbright Program Offices are responsible for the overseas management of ECA's Fulbright Program and other ECA educational exchange programs, which includes recruitment of visiting Fulbright students and scholars, placement and logistical support for U.S. Fulbright scholars and students located in Russia and Ukraine. ECA and the U.S. Embassy Public Affairs Sections (PAS) in Russia and Ukraine have full authority over all program operations, policy issues, and the selection and supervision of the Directors of the Fulbright Offices (who are U.S. citizens) and their staffs. Administration of the Russian and Ukraine Fulbright Programs is the responsibility of the Fulbright Program Office staff in their respective country.

Due to legal constraints and logistical obstacles, the U.S. Government is unable to provide operating funds directly to the Fulbright Offices in Russia and Ukraine. Thus, through this RFGP, ECA requests the services of a recipient organization to be responsible for disbursing U.S. Government funds in support of the activities of the Offices. This includes, but is not limited to, guaranteeing that rent and staff salaries are paid in a timely manner, providing funds for program activities and office supplies, maintaining a legal status in Russia and/or Ukraine and providing administrative services in order to ensure the smooth and continued operations of the Fulbright Program Offices. The specific duties of the ECA recipient organization requested in the RFGP are outlined below.

#### Purpose

The grantee organization will be responsible for the following:

1. Performing all legal requirements necessary to maintain the office space, staffing, and program activities of the Fulbright Program Offices in Moscow and/or Kyiv.
2. Demonstrating the ability, in terms of an accounting staff knowledgeable in Russian and/or Ukrainian law, to be able to provide the Fulbright Program Office with cash (dollars and/or rubles and/or hryvna) and/or pay bills directly.
3. Providing proof of legal status/registration as well as evidence of the ability to handle a wide range of payments in Russia and/or Ukraine and in the United States.
4. Oversight of a modest operating budget for the Fulbright Program Offices, including advancing budget funds to the Offices for programmatic as well as administrative activities. The grantee organization will not have oversight of Fulbright grant monies designated for students and scholars.
5. Payment of salaries and benefits—including housing allowances—for the American Director of the Fulbright Program Offices in Russia and/or Kyiv. The Directors' salaries will be determined by PAS and ECA.
6. Payment of salaries and benefits for local staff. Local staff salaries will be determined by PAS and ECA.
7. Assisting PAS and ECA in the recruitment of Fulbright Program Offices staff when vacancies occur. Final decisions on hiring will be made by PAS and ECA.
8. Consulting and cooperation, on administrative matters, with the U.S.-based organizations responsible for the administration of the Fulbright Program in the United States.

Programs must comply with J-1 visa regulations. Please refer to the Solicitation Package for further information.

#### Budget Guidelines

Applicants must submit comprehensive budgets with each proposal. Awards may not exceed \$920,150 for the Moscow Office (or \$975,590 should it become necessary to cover higher rent or a move to new office space); and \$572,000 for the Kyiv Office. For the Moscow Office applicants, the budget submission should be based on the lower figure only. The budget must include all costs and indicate the percentage of time required for each activity for all program staff, charged to each specific project. The budget should also include any cost sharing in the form of allowable direct

or indirect costs or in-kind or cash contributions. The total of any administrative pass-through charges of the grantee organization, including indirect costs or fees, should be approximately 15 percent of the total budget. As with other exchange programs, ECA is committed to containment of costs consistent with overall program objectives and sound management. Grant-funded items of expenditures may include but are not limited to the categories below.

Applicant organizations are encouraged to note in their program budgets and narratives areas in which economies beyond ECA-allowable costs can be achieved.

Program costs may include but are not limited to:

- (1) Program advertising and recruitment costs.
- (2) Selection committee honoraria.
- (3) Semi-finalist travel expenses for interviews in Moscow and/or Kyiv.
- (4) Institutional TOEFL for Fulbright semi-finalists.
- (5) Room rental fees for interviews and Institutional TOEFL.
- (6) Recruitment travel in Russia and/or Ukraine by program staff, including per diem.
- (7) Domestic travel for semi-finalists.
- (8) Pre-departure orientation costs.
- (9) Costs for two Russia Fulbright summer schools organized by the Moscow Fulbright Office.
- (10) Alumni programming and tracking.
- (11) Program evaluation.

Administrative costs may include but are not limited to:

- (1) Russian/Ukrainian visas for Fulbright Director.
- (2) Staff salaries and benefits, including housing allowance, for Fulbright Director.
- (3) Rent and utilities for Moscow/Kyiv offices.
- (4) Internet (e-mail, Web site support) and communications (e.g., fax, telephone, postage).
- (5) Office supplies.
- (6) Shipment of materials from Russia/Ukraine to the United States.
- (7) Round-trip travel for home leave for the Fulbright Director to the United States (via American carrier).
- (8) Administration of tax withholding as required by U.S. Federal, State and local authorities and in accordance with relevant tax treaties.
- (9) A-135 audit fees.

A clear and cogent narrative must accompany the budget to explain and justify each line item. Please refer to the Proposal Submission Instructions (PSI) in the Solicitation Package for complete budget guidelines and formatting

instructions. In addition, the budget narrative should indicate how the applicant organization will monitor and track expenditures for the duration of the grant to avoid under or over expenditures.

## II. Award Information

*Type of Award:* Grant Agreement.  
ECA's level of involvement in this program is listed under number I above.  
*Fiscal Year Funds:* FY2008, pending availability of funds.

*Approximate Total Funding:* \$920,150 (or \$975,590 should a move to new office space become necessary) for the Moscow Office and \$572,000 for the Kyiv Office, pending availability of funds.

*Approximate Number of Awards:* Two.

*Anticipated Award Date:* Pending availability of funds (Proposed award date: October 1, 2007).

*Additional Information:* Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

## III. Eligibility Information:

III.1. *Eligible applicants:* Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. *Cost Sharing or Matching Funds:* There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A-110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. *Other Eligibility Requirements:*

(a) Bureau grant guidelines require that organizations with fewer than four years of experience in conducting international exchange programs be limited to \$60,000 in Bureau funding. Therefore, organizations with fewer than four years experience in conducting international exchanges are ineligible to apply under this competition.

(b) *Technical Eligibility:* All proposals must comply with the following: proposals must demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor (J visa) programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements, or they will result in your proposal being declared technically ineligible and given no further consideration in the review process. The U.S.-based organization responsible for the administration of the Fulbright Program in the United States will be responsible for issuing DS-2019 forms to participants in this program.

## IV. Application and Submission Information

**Note:** Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

### IV.1. Contact Information to Request an Application Package

Please contact the Office of Academic Exchange Programs, ECA/A/E/EUR, SA-44, Room 246, U.S. Department of State, SA-44, 301 4th Street, SW., Washington, DC 20547, (202) 453-8522; fax (202) 453-8520, or E-mail [IovineMS@state.gov](mailto:IovineMS@state.gov) to request a Solicitation Package. Please specify Bureau Program Officer Micaela S. Iovine on all inquiries and correspondence and refer to the Funding Opportunity Number (ECA/A/E/EUR 08-02) located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from [grants.gov](http://grants.gov). Please see section IV.2 for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms, standard guidelines

for proposal preparation, award criteria and budget instructions tailored to this competition.

#### *IV.2. To Download a Solicitation Package Via Internet*

The entire Solicitation Package may be downloaded from the Bureau's Web site at <http://exchanges.state.gov/education/rfgps/menu.htm>, or from the Grants.gov Web site at <http://www.grants.gov>.

Please read all information before downloading.

#### *IV.3. Content and Form of Submission*

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under section IV.3e. "Application Deadline and Methods of Submission" below.

IV.3a. Applicants are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access <http://www.dunandbradstreet.com> or call 1-866-705-5711. Please ensure that your DUNS number is included in the appropriate box of the SF-424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements and the Project Objectives, Goals and Implementation (POGI) document.

IV.3c. Applicants must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit that has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

##### *IV.3d.1 Adherence to All Regulations Governing the J Visa*

The Bureau of Educational and Cultural Affairs is placing renewed

emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The U.S.-based organization responsible for the administration of the Fulbright Program in the United States will be responsible for issuing DS-2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at <http://exchanges.state.gov> or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD-SA-44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203-5029, Fax: (202) 453-8640.

Please refer to Solicitation Package for further information.

##### *IV.3d.2 Diversity, Freedom and Democracy Guidelines*

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into your proposal. Public Law 104-319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106-113 requires that the governments of the countries described

above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

#### *IV.3e Application Deadline and Methods of Submission*

*Application Deadline Date:* June 1, 2007.

*Reference Number:* ECA/A/E/EUR-08-02.

*Methods of Submission:* Applications may be submitted in one of two ways:

- (1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or
- (2) Electronically through <http://www.grants.gov>.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF-424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

##### *IV.3e.1 Submitting Printed Applications*

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

**Important note:** When preparing your submission please make sure to include one extra copy of the completed SF-424 form and place it in an envelope addressed to "ECA/EX/PM."

The original and eight (8) copies of the application should be sent to: U.S. Department of State, SA-44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/EUR-08-02, Program Management, ECA/EX/PM, Room 534,

301 4th Street, SW., Washington, DC 20547.

#### IV.3e.2 Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (<http://www.grants.gov>). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system. Please follow the instructions available in the "Get Started" portion of the site (<http://www.grants.gov/GetStarted>).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, 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 not wait until the application deadline to begin the submission process through Grants.gov.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800-518-4726. Business Hours: Monday-Friday, 7 a.m.-9 p.m. Eastern Time. E-mail: [support@grants.gov](mailto:support@grants.gov).

Applicants have until midnight (12 a.m.), Washington, DC, time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3f. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

## V. Application Review Information

### V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards grants resides with the Bureau's Grants Officer.

### Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Planning*: Proposals should clearly demonstrate how the organization will meet the program's objectives and plan. Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

2. *Institutional Capacity*: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals.

3. *Support of Diversity*: Proposals should demonstrate substantive support of the Bureau's policy on diversity.

4. *Institution's Record/Ability*: Proposals should demonstrate an institutional record of successful exchange program administration, particularly responsible fiscal management, and full compliance with all reporting requirements for any past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. *Project Evaluation*: Proposals should include a plan to evaluate the success of the fiduciary arrangement and make recommendations for improving the process in the future.

6. *Cost-effectiveness/cost-sharing*: The overhead and administrative components of the proposal, including salaries, should be kept as low as

possible. All other items should be necessary and appropriate.

## VI. Award Administration Information

### VI.1. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

### VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A-122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A-21, "Cost Principles for Educational Institutions."

OMB Circular A-87, "Cost Principles for State, Local and Indian Governments."

OMB Circular No. A-110 (Revised), "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations."

OMB Circular No. A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments."

OMB Circular No. A-133, "Audits of States, Local Government, and Non-profit Organizations."

Please reference the following Web sites for additional information: <http://www.whitehouse.gov/omb/grants>. <http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI>.

### VI.3. Reporting Requirements

The grantee must provide ECA with a hard copy original plus two copies of the following reports:

(1) A final financial report no more than 90 days after the expiration of the award;

(2) Quarterly financial reports that should show the disposition of funds for purposes as required in the grant.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

### VII. Agency Contacts

For questions about this announcement, contact: Micaela S. Iovine, Office of Academic Exchange Programs, ECA/A/E/EUR, Room 246, ECA/A/E/EUR-08-02 U.S. Department of State, SA-44, 301 4th Street, SW., Washington, DC 20547, tel. (202) 453-8522; fax (202)453-8520, [IovineMS@state.gov](mailto:IovineMS@state.gov).

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/EUR-08-02.

### VIII. Other Information

#### Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: March 29, 2007.

**Dina Habib Powell,**

*Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E7-6359 Filed 4-4-07; 8:45 am]

BILLING CODE 4710-05-P

## DEPARTMENT OF STATE

[Public Notice 5746]

### Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Youth Leadership Program with Rwanda and Kenya

*Announcement Type:* New Grant.  
*Funding Opportunity Number:* ECA/PE/C/PY-07-39.

*Catalog of Federal Domestic Assistance Number:* 00.000.

*Application Deadline:* May 31, 2007.  
*Executive Summary:* The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for two projects, one with

Rwanda and one with Kenya, under the Youth Leadership Program. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to conduct a three- to four-week U.S.-based project for secondary school students and teachers from Rwanda or from Kenya. The project activities will focus on civic education, leadership, diversity, and community activism.

### I. Funding Opportunity Description

#### Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries \* \* \*; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations \* \* \* and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

#### Overview

With this new Youth Leadership Program, the Bureau of Educational and Cultural Affairs (ECA) plans to support two separate exchange projects, one with Kenya and one with Rwanda, in late 2007. Each three- to four-week long project will enable 18 teenagers (ages 15-17) and three adult educators from one of the two countries to participate in an intensive exchange in the United States designed and implemented by the grant recipient organizations. The U.S. Embassies in Nairobi and Kigali will recruit, screen, and select the participants.

These projects are designed to promote high-quality leadership, civic responsibility, and civic activism among our countries' future leaders. The projects will offer a practical examination of the principles of democracy and civil society as practiced in the United States and provide participants with training that allows them to develop their leadership skills. Participants will be engaged in a variety of activities such as workshops, community and/or school-based programs, seminars, and other activities

that are designed to achieve the projects' stated goals and objectives. Participants will live with American families for most of the exchange period. Multiple opportunities for participants to interact with American youth and educators must be included.

The goals of the program are:

(1) To promote mutual understanding between the people of the United States and the people of Kenya and of Rwanda;

(2) To develop a sense of civic responsibility and commitment to community development among youth;

(3) To develop leadership skills among secondary school students appropriate to their needs;

(4) To foster relationships among youth from different ethnic, religious, and national groups.

A successful project will be one that nurtures a cadre of students and teachers to be actively engaged in addressing issues of concern in their schools and communities upon their return home and that equips them with the knowledge, skills, and confidence to become citizen activists.

The Bureau anticipates providing two grants to support two discrete projects, one for each country and each funded at approximately \$95,000. [Note that this funding does not include international airfare for the exchange participants.] Organizations may submit only one proposal, for either Rwanda or Kenya. The two projects will be judged independently and proposals will be compared only to proposals for the same country. ECA intends to award only one grant for each project.

#### Project A: Rwanda

Applicants should propose a three- to four-week U.S. program between the second week of November and mid-December 2007. Funding for this grant is approximately \$95,000.

#### Project B: Kenya

Applicants should propose a three- to four-week U.S. program in December 2007. Funding for this grant is approximately \$95,000.

Applicants should outline their capacity for doing projects of this nature, focusing on three areas of competency: (1) Provision of leadership and civic education programming, (2) age-appropriate programming for youth, and (3) previous experience working with exchange participants from Africa. Applicants need not have a partner in Kenya or Rwanda, as the staff of the Public Affairs Section (PAS) of the U.S. Embassies in Nairobi and Kigali will recruit and select the participants and provide a pre-departure orientation.

### Guidelines

The grants will begin on or about September 1, 2007. The grant period will be approximately 8 to 12 months in duration, as appropriate for the applicant's program design.

The U.S. project activities should take place during a school break in the partner country; the time frames are noted above for each country. Applicants should propose the period of the exchange, but the exact timing of the project may be altered through the mutual agreement of the Department of State and the grant recipient. The program should be no less than three weeks (21 days) and up to four weeks (28 days) in duration.

The delegation from each country is expected to be 21 secondary school students and educators. The total number of participants in a delegation is subject to change. The 18 students will be between the ages of 15 and 18, will have demonstrated leadership abilities in their schools and/or communities, and will be high academic achievers. The three educators will be high school teachers, or possibly community leaders who work with youth, who have demonstrated an interest in promoting youth leadership. Participants will be proficient in the English language.

In pursuit of the goals outlined above, the program arrangements will include the following:

- A welcome orientation.
- The design and planning of activities that provide a substantive program on civic education, community activism, respect for diversity, constructive debate and dialogue, and leadership through both academic and extracurricular components. The program will take place in Washington, DC, and in one or two other communities. Activities should take place in schools as much as possible and in the community. Community service and computer training will also be included. It is crucial that programming involve American students whenever possible.
- Opportunities for the educators to work with their American peers to help them foster youth leadership, civic education, and community service programs at home.
- Logistical arrangements, homestays, disbursement of stipends/per diem, local travel, and travel between sites.
- A closing session to summarize the project activities and prepare participants for their return home.
- Support of follow-on activities in Kenya or Rwanda after the participants have returned home designed to reinforce values and skills imparted

during the U.S. program. U.S. project staff or trainers will travel to the partner country several months after the exchange.

Proposals must demonstrate how the stated objectives will be met. The proposal narrative must provide detailed information on the major program activities, and applicants should explain and justify their programmatic choices. Programs must comply with J-1 visa regulations for the International Visitor and Government Visitor categories. Please be sure to refer to the complete Solicitation Package—this Request for Grant Proposals (RFGP), the Project Objectives, Goals, and Implementation (POGI), and the Proposal Submission Instructions (PSI)—for further information.

### II. Award Information

*Type of Award:* Grant Agreement.

*Fiscal Year Funds:* 2007.

*Approximate Total Funding:*  
\$190,000.

*Approximate Number of Awards:*  
Two.

*Floor of Award Range:* \$95,000.

*Ceiling of Award Range:* \$95,000.

*Anticipated Award Date:* September 1, 2007.

*Anticipated Project Completion Date:* 8–12 months after start date, to be specified by applicant based on project plan.

*Additional Information:* Pending successful implementation of these projects and the availability of funds in subsequent fiscal years, it is ECA's intent to renew these grants for two additional fiscal years before openly competing them again.

### III. Eligibility Information

#### III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

#### III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all

costs that are claimed as your contribution, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A-110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

#### III.3. Other Eligibility Requirements

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to \$60,000 in Bureau funding. ECA anticipates awarding two grants in amounts of approximately \$95,000 each to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are not eligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(b) *Technical Eligibility:* Applicants may submit only one proposal in response to this RFGP that proposes to provide a program for either Kenya or Rwanda. Organizations that submit more than one proposal will result in having all of their proposals declared technically ineligible, and none of the submissions will be reviewed by a State Department panel.

### IV. Application and Submission Information

**Note:** Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

#### IV.1. Contact Information To Request an Application Package

Please contact the Youth Programs Division (ECA/PE/C/PY), Room 568, U.S. Department of State, SA-44, 301 4th Street, SW., Washington, DC 20547, Telephone (202) 203-7505, Fax (202) 203-7529, E-mail: [LantzCS@state.gov](mailto:LantzCS@state.gov) to request a Solicitation Package. Please refer to the Funding Opportunity Number (ECA/PE/C/PY-07-39) located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained

from Grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria, and budget instructions tailored to this competition.

Please specify Bureau Program Officer Carolyn Lantz and refer to the Funding Opportunity Number located at the top of this announcement on all other inquiries and correspondence.

#### IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at <http://exchanges.state.gov/education/rfgps/menu.htm>, or from the Grants.gov Web site at <http://www.grants.gov>.

Please read all information before downloading.

#### IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access <http://www.dunandbradstreet.com> or call 1-866-705-5711. Please ensure that your DUNS number is included in the appropriate box of the SF-424 form that is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget. Please refer to the Solicitation Package. It contains the mandatory PSI document and the POGI document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary

documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa. The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the Responsible Officer for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR 62, organizations receiving grants under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of grantee program organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62. If the applicant organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss its record of compliance with 22 CFR 62 *et seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS-2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at <http://exchanges.state.gov> or from: United States Department of

State, Office of Exchange Coordination and Designation, ECA/EC/EC-D-SA-44, Room 734, 301 4th Street, SW., Washington, DC 20547, *Telephone:* (202) 203-5029, *Fax:* (202) 453-8640.

IV.3d.2 Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Pub. L. 104-319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Pub. L. 106-113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation. Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives,

your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.
2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

**Please note:** Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when

particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. Awards may not exceed the amount specified. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants applying to implement more than one project must provide separate sub-budgets for each.

Please refer to the other documents in the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3F. Application Deadline and Methods of Submission:

*Application Deadline Date:* May 31, 2007.

*Reference Number:* ECA/PE/C/PY-07-39.

*Methods of Submission:* Applications may be submitted in one of two ways:

- (1) In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or
- (2) Electronically through <http://www.grants.gov>.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF-424 contained in the mandatory PSI of the solicitation document.

IV.3f.1. Submitting Printed Applications. Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition.

Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

**Important note:** When preparing your submission please make sure to include one extra copy of the completed SF-424 form and place it in an envelope addressed to "ECA/EX/PM".

The original, one fully-tabbed copy, and six copies of the application with Tabs A-E (for a total of 8 copies) should be sent to: U.S. Department of State, SA-44, Bureau of Educational and Cultural Affairs, *Ref.:* ECA/PE/C/PY-07-39, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the executive summary, proposal narrative, budget section, and any important appendices as e-mail attachments in Microsoft Word and Excel to the following e-mail address: [LantzCS@state.gov](mailto:LantzCS@state.gov). In the e-mail message subject line, include the name of the applicant organization and the partner country. The Bureau will transmit these files electronically to the Public Affairs Sections of the U.S. Embassies in the participating countries for their review.

IV.3f.2. Submitting Electronic Applications. Applicants have the option of submitting proposals electronically through [Grants.gov](http://www.grants.gov) (<http://www.grants.gov>). Complete solicitation packages are available at [Grants.gov](http://www.grants.gov) in the "Find" portion of the system. Please follow the instructions available in the "Get Started" portion of the site (<http://www.grants.gov/GetStarted>).

Several of the steps in the [Grants.gov](http://www.grants.gov) registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with [Grants.gov](http://www.grants.gov). Once registered, 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 not wait

until the application deadline to begin the submission process through Grants.gov.

*Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800-518-4726, Business Hours: Monday-Friday, 7 a.m.-9 p.m. Eastern Time, E-mail: support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from Grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

*IV.3g. Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program.

## V. Application Review Information

### V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

### Review Criteria

Please see the review criteria in the accompanying POGI document.

## VI. Award Administration Information

### VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

### VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

- Office of Management and Budget Circular A-122, "Cost Principles for Nonprofit Organizations."
- Office of Management and Budget Circular A-21, "Cost Principles for Educational Institutions."
- OMB Circular A-87, "Cost Principles for State, Local and Indian Governments."
- OMB Circular No. A-110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.
- OMB Circular No. A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.
- OMB Circular No. A-133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:  
<http://www.whitehouse.gov/omb/grants>.  
<http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI>.

### VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports:

- (1) A final program and financial report no more than 90 days after the expiration of the award;
- (2) Interim reports, as required in the Bureau grant agreement.

Grantees will be required to provide reports analyzing their evaluation

findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

### VI.4. Program Data Requirements

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three workdays prior to the official opening of the activity.

## VII. Agency Contacts

For questions about this announcement, contact: Carolyn Lantz, Program Officer, Youth Programs Division (ECA/PE/C/PY), Room 568, U.S. Department of State, SA-44, 301 4th Street, SW., Washington, DC 20547, Telephone (202) 203-7505, Fax (202) 203-7529, E-mail: [LantzCS@state.gov](mailto:LantzCS@state.gov).

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY-07-39.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

## VIII. Other Information

### Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding.

Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: March 27, 2007.

**Dina Habib Powell,**

*Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E7-6361 Filed 4-4-07; 8:45 am]

BILLING CODE 4710-05-P

## DEPARTMENT OF STATE

[Public Notice 5745]

### **Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Youth Leadership Program: Diversity, Democracy, Globalization, and Citizenship**

*Announcement Type:* New Grant.  
*Funding Opportunity Number:* ECA/PE/C/PY-07-31.

*Catalog of Federal Domestic Assistance Number:* 00.000.

*Application Deadline:* May 31, 2007.  
*Executive Summary:* The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for the "Youth Leadership Program: Diversity, Democracy, Globalization, and Citizenship" in which the participating countries will be Turkey, Germany, and the United States. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to recruit and select 30-40 youth and adult participants overseas and in the United States, to provide the participants with a 25-to 30-day U.S.-based exchange program, and to support follow-on activities for the alumni. The program will be designed to promote high-quality leadership and civic responsibility among future leaders and will enable the Turkish, German, and American participants to explore diversity and the expression of and respect for individual beliefs as citizens in democratic nations.

#### **I. Funding Opportunity Description**

##### *Authority*

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256, as amended, also known as the Fulbright-

Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries \* \* \*; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations \* \* \* and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

##### *Purpose*

"Youth Leadership Program: Diversity, Democracy, Globalization, and Citizenship" will enable approximately 30-40 teenagers (ages 16-18) and adult educators to participate in an intensive, thematic project in the United States for approximately four weeks that allows for open discussion of the roles and responsibilities of a citizen in a democracy, lessons in critical thinking about various approaches to governance and respect for different perspectives, and the expression of identity and values. Leadership development, community service, and the development of a global point of view of are also elements of this program. The program will offer a firsthand view of U.S. practices, such as how groups with differing points of view find common ground or how governmental and non-governmental organizations reach out to those reflecting a spectrum of views. The participants may explore diversity from the perspectives of various sectors of a society; for example, immigrants and natives, socio-economic classes, religious groups, political groups, or from different generations.

The Turkish and German participants will be joined by American students for the program for a dialogue among the diverse communities represented by the three countries. Participants will be engaged in a variety of activities such as workshops, community and/or school-based programs, cultural activities, seminars and other activities designed to achieve the project's stated goals and objectives.

The goals of the program are:

- (1) To develop a sense of civic responsibility and a commitment to international understanding and cooperation among youth;
- (2) To understand how different people and societies deal with matters of individual belief in a democratic

society and identify with cultural, political, religious, and social groups;

(3) To foster relationships among youth from different ethnic, religious, and national groups;

(4) To promote mutual understanding and respect between the people of the United States, Germany, and Turkey; and

(5) To develop a cadre of youth leaders who will share their knowledge and skills with their peers through positive action.

With this focus, the following outcomes will indicate a successful project:

- Participants will work together to identify areas of commonality and contrast among countries and diverse groups within a country.
  - Participants will develop critical thinking skills that will enable them to consider the perceptions and concerns of individuals with different perspectives.
  - Participants will demonstrate a better understanding of group and individual identity, respect for minorities, and freedom of expression in a democracy.
- Applicants should identify their own specific objectives and measurable outcomes based on these program goals and the project specifications provided in this solicitation.

Applicants must demonstrate their capacity for doing projects of this nature, focusing on three areas of competency: (1) Provision of programs that address the goals and themes outlined in this document; (2) age-appropriate programming for youth; and (3) previous experience working on programs with Turkey and/or with Germany. Applicants, or their partner organizations, need to have the necessary capacity in these two countries to recruit, select, and orient participants for the program, and to provide follow-on activities.

##### *Guidelines*

Grants should begin on or about September 1, 2007. The grant period will be approximately 14 to 20 months in duration, according to the applicant's program plan.

In pursuit of the goals outlined above, the program arrangements will include the following:

- Recruitment and selection of a diverse group of youth and adult educators in Turkey, in Germany, and in the United States.
- A pre-departure orientation program.
- Design and planning of activities in the United States that provide a substantive program on leadership, civic

responsibility, diversity, and the expression of and respect for individual beliefs by citizens in democratic nations. Some activities should be school and/or community-based, as feasible, and the projects will involve interaction with American peers in addition to those selected for the program.

- Logistical arrangements, homestay arrangements and other accommodation, disbursement of stipends/per diem, local travel, and travel between sites.

- Follow-on activities in the participants' home countries designed to reinforce the ideas, values, and skills imparted during the U.S. program.

#### *Recruitment and Selection:*

Applicants must outline a recruitment and selection plan in all three countries in their proposals. Once a grant is awarded, the grant recipient must consult with the Public Affairs Sections at the U.S. Embassies in Ankara and Berlin to review the plan and incorporate their priorities. The Department of State and/or its overseas representatives reserve final approval of all selected delegations.

*Participants:* The participants will be teenagers, aged 16–18, and adult educators from Turkey, Germany, and the United States who represent the ethnic, religious, racial, gender balance, and geographic diversity of their populations. The total number of participants will be roughly 30 to 40, with generally equal representation from the three countries. The ratio of student to adult participants will be approximately 5:1 or 6:1.

In Turkey, participants will be recruited from a spectrum of different groups and organizations dealing with education, governance, and public life. In Germany, participants will be recruited through outreach to traditionally under-served or marginalized communities, as well as from youth groups dealing with education, governance, and public life. In the United States, participants will also be recruited through diverse networks of schools, clubs, non-profit organizations, and other groups.

Participants will be proficient in English in order to fully participate in discussions. They will demonstrate an interest in the project theme and will exhibit leadership, maturity, flexibility, and open-mindedness. The adults will be teachers or community leaders who work with youth, and they will have the dual role of both exchange participant and chaperone.

*U.S. Program Activities:* Applicants should propose a 25-to 30-day exchange in the United States that takes place

during the summer of 2008 between late June and early August. The project may take place in one or two communities and should offer the participants exposure to the variety of American life. The closing workshop for the program must be organized in Washington, DC, and will offer a chance for State Department officials to meet the participants.

The program delivery will be focused primarily on interactive activities, practical experiences, and other hands-on opportunities to learn about the fundamentals of a dynamic and diverse civil society, community service, tolerance and respect for diversity, and building leadership skills. The participants will examine ways that individual perspectives can be expressed and the ways that democratic nations acknowledge such expression. They should have a chance to see community activists and leaders in action. The activities of the project could include a mix of workshops, simulations and role-playing, case studies, meetings, classroom visits, site visits, training, and collaborative projects and discussions with peers. Leadership development and teambuilding exercises will also be included, along with volunteer service activities. Cultural and recreational activities will balance the schedule. The participants will live with American host families for at least half of the program, preferably in pairings that mix up the participants from the three countries.

Programs will include “how-to” training that enables the students and teachers to get a hands-on feel for the topic (such as participating in a debate, peer mediation session, or mock trial), to discuss challenging issues, and to recreate similar activities for their peers back home.

The program will also provide opportunities for the adult educators to work with their American peers and other professionals and volunteers to learn about new topics and methods in teaching the rights and responsibilities of a citizen in a democracy and the practical application of theoretical concepts.

The program in the United States will end with a closing session that focuses on summarizing the experience, developing action plans for activities at home, and preparing for re-entry.

*Follow-on Activities and In-Country Programming:* Follow-on activities that are designed to reinforce values and skills imparted during the U.S. program will be organized for project alumni in each country. Applicants should present creative and effective ways to address

the project themes, for both program participants and their peers, as a means to amplify the program's impact.

Proposals must demonstrate how the stated objectives will be met. The proposal narrative should provide detailed information on the major program activities, and applicants should explain and justify their programmatic choices. Programs must comply with J–1 visa regulations. Please be sure to refer to the complete Solicitation Package—this Request for Grant Proposals (RFGP), the Project Objectives, Goals, and Implementation (POGI), and the Proposal Submission Instructions (PSI)—for further information.

## **II. Award Information**

*Type of Award:* Grant Agreement.

*Fiscal Year Funds:* 2007.

*Approximate Total Funding:* \$245,000.

*Approximate Number of Awards:* One.

*Anticipated Award Date:* September 1, 2007.

*Anticipated Project Completion Date:* 14–20 months after start date, to be specified by applicant based on project plan.

*Additional Information:* Pending successful implementation of the project and the availability of funds in subsequent fiscal years, ECA reserves the right to renew grants for up to two additional fiscal years before openly competing grants under this program again.

## **III. Eligibility Information**

### *III.1. Eligible Applicants*

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

### *III.2. Cost Sharing or Matching Funds*

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs that are claimed as your contribution, as well as costs to be paid by the Federal Government. Such

records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A-110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

### III.3. Other Eligibility Requirements

Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to \$60,000 in Bureau funding. ECA anticipates awarding one grant not to exceed \$245,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

## IV. Application and Submission Information

**Note:** Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

### IV.1. Contact Information To Request an Application Package

Please contact the Youth Programs Division (ECA/PE/C/PY), Room 568, U.S. Department of State, SA-44, 301 4th Street, SW., Washington, DC 20547, Telephone (202) 203-7505, Fax (202) 203-7529, E-mail: [LantzCS@state.gov](mailto:LantzCS@state.gov) to request a Solicitation Package. Please refer to the Funding Opportunity Number (ECA/PE/C/PY-07-31) located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from [Grants.gov](http://Grants.gov). Please see section IV.3f for further information.

The Solicitation Package contains the PSI document, which consists of required application forms and standard guidelines for proposal preparation.

It also contains the POGI document, which provides specific information, award criteria, and budget instructions tailored to this competition.

Please specify Bureau Program Officer Carolyn Lantz and refer to the Funding Opportunity Number (ECA/PE/C/PY-07-31) located at the top of this

announcement on all other inquiries and correspondence.

### IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at <http://exchanges.state.gov/education/rfgps/menu.htm>, or from the [Grants.gov](http://www.grants.gov) Web site at <http://www.grants.gov>.

Please read all information before downloading.

### IV.3. Content and Form of Submission:

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Submission Dates and Times section" below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access <http://www.dunandbradstreet.com> or call 1-866-705-5711. Please ensure that your DUNS number is included in the appropriate box of the SF-424 form that is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget. Please refer to the Solicitation Package for additional formatting and technical requirements. It contains the mandatory PSI document and the POGI document.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa. The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program

under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR 62, organizations receiving grants under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of grantee program organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR 62 *et seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS-2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at <http://exchanges.state.gov> or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD-SA-44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203-5029, Fax: (202) 453-8640.

IV.3d.2. Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to

ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into your proposal. Public Law 104-319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106-113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation. Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered,

often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.
2. *Participant learning*, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. *Participant behavior*, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. *Institutional changes*, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

**Please note:** Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a

minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. Awards may not exceed the amounts specified. Funding for the project is not to exceed \$245,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Please refer to the other documents in the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

*Application Deadline Date:* Thursday, May 31, 2007.

*Reference Number:* ECA/PE/C/PY-07-31.

*Methods of Submission:* Applications may be submitted in one of two ways:

- (1) In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or
- (2) Electronically through <http://www.grants.gov>.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF-424 contained in the mandatory PSI of the solicitation document.

IV.3f.1 Submitting Printed Applications. Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any

time. Only proposals submitted as stated above will be considered.

**Important note:** When preparing your submission please make sure to include one extra copy of the completed SF-424 form and place it in an envelope addressed to "ECA/EX/PM".

The original, one fully-tabbed copy, and six copies of the application with Tabs A-E (for a total of 7 copies) should be sent to: U.S. Department of State, SA-44, Bureau of Educational and Cultural Affairs, *Ref.:* ECA/PE/C/PY-07-31, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the executive summary, proposal narrative, budget section, and any essential appendices as e-mail attachments in Microsoft Word and Excel to the following e-mail address:

*LantzCS@state.gov*. In the e-mail message subject line, include the name of the applicant organization. The Bureau will transmit these files electronically to the Public Affairs Sections in the U.S. Embassies in Ankara and Berlin for review.

IV.3f.2. Submitting Electronic Applications: Applicants have the option of submitting proposals electronically through Grants.gov (<http://www.grants.gov>). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system. Please follow the instructions available in the "Get Started" portion of the site (<http://www.grants.gov/GetStarted>).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, 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 not wait until the application deadline to begin the submission process through Grants.gov.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, *Contact Center Phone:* 800-518-4726, *Business Hours:* Monday-Friday, 7 a.m.-9 p.m. Eastern Time, E-mail: *support@grants.gov*.

Applicants have until midnight (12 a.m.) of the closing date to ensure that their entire applications have been uploaded to the Grants.gov site.

Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the Grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from Grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. *Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program.

## V. Application Review Information

### V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

### Review Criteria

Please see the review criteria in the accompanying POGI document.

## VI. Award Administration Information

### VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the

recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

### VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A-122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A-21, "Cost Principles for Educational Institutions."

OMB Circular A-87, "Cost Principles for State, Local and Indian Governments."

OMB Circular No. A-110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A-133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

<http://www.whitehouse.gov/omb/grants>

<http://exchanges.state.gov/education/grantsdiv/terms.htm#article1>

### VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) Interim reports, as required in the Bureau grant agreement.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

#### VI.4. Program Data Requirements

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three workdays prior to the official opening of the activity.

#### VII. Agency Contacts

For questions about this announcement, contact: Carolyn Lantz, Program Officer, Youth Programs Division (ECA/PE/C/PY), Room 568, U.S. Department of State, SA-44, 301 4th Street, SW., Washington, DC 20547, Telephone (202) 203-7505, Fax (202) 203-7529, E-mail: [LantzCS@state.gov](mailto:LantzCS@state.gov).

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY-07-31.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

#### VIII. Other Information

##### Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: March 29, 2007.

##### Dina Habib Powell,

*Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E7-6369 Filed 4-4-07; 8:45 am]

BILLING CODE 4710-05-P

## DEPARTMENT OF STATE

### [Public Notice 5742]

#### Meeting of Advisory Committee on International Communications and Information Policy

The Department of State announces the next meeting of its Advisory Committee on International Communications and Information Policy (ACICIP) to be held on April 19, 2007, from 10 a.m. to 12 Noon, in the Dean Acheson Auditorium of the Harry S. Truman Building of the U.S. Department of State. The Truman Building is located at 2201 C Street, NW., Washington, DC 20520.

The committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country issues.

The meeting will be led by ACICIP Chair Mr. Richard E. Wiley of Wiley Rein LLP. Ambassador David A. Gross, Deputy Assistant Secretary and U.S. Coordinator for International Communications and Information Policy, and other senior U.S. Government officials will address the meeting.

The main focus of this meeting will be to discuss the U.S. preparations, including formation of the U.S. delegation, for the 2007 World Radiocommunication Conference (WRC-07) that will take place in Geneva, Switzerland, October 22–November 16, 2007. WRC-07 will meet to consider proposals to revise the international Radio Regulations including the Table of Frequency Allocations, technical provisions such as power limits, and regulatory provisions such as coordination procedures for satellite network frequency assignment. Department officials will also report on certain Digital Freedom Initiative activities that have taken place from January 1, 2007.

Members of the public may submit suggestions and comments to the ACICIP. Submissions regarding an event, consultation, meeting, etc. listed in the agenda above should be received by the ACICIP Executive Secretary (contact information below) at least ten working days prior to the date of that

listed event. They should be submitted in written form and should not exceed one page for each country (for comments on consultations) or for each subject area (for other comments). Resource limitations preclude acknowledging or replying to submissions.

While the meeting is open to the public, admittance to the Department of State building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, we must receive the following information from you no later than 5 p.m. on Tuesday, April 17, 2007 (Please note that this information is not retained by the ACICIP Executive Secretary and must therefore be re-submitted for each ACICIP meeting):

I. State that you are Requesting Pre-Clearance to a Meeting.

II. Provide the Following Information:

1. Name of meeting and its date and time.
2. Visitor's full name.
3. Company/Agency/Organization.
4. Title at Company/Agency/Organization.
5. Date of birth.
6. Citizenship.
7. Type of ID visitor will show upon entry (from list below).

- U.S. driver's license with photo.
- Passport.
- U.S. government agency ID.
- 8. ID number on the ID visitor will show upon entry.

Send the above information to Richard W. O'Brien by fax (202) 647-0158 or e-mail [o'brienrw@state.gov](mailto:o'brienrw@state.gov).

*Privacy Act Statement:* The above information is sought pursuant to 5 U.S.C. 301 and 22 U.S.C. §§ 2651a, 4802(a). The principal purpose for collecting the information is to assure protection of U.S. Department of State facilities. The information provided also may be released to federal, state or local agencies for law enforcement, counterterrorism or homeland security purposes, or to other federal agencies for certain personnel and records management matters. Providing this information is voluntary but failure to do so may result in denial of access to U.S. Department of State facilities.

All visitors for this meeting must use the 23rd Street entrance. The valid ID bearing the number provided with your pre-clearance request will be required for admittance. Non-U.S. government attendees must be escorted by Department of State personnel at all times when in the building.

For further information, please contact Richard W. O'Brien, Executive Secretary of the Committee, at (202) 647-4736 or [o'brienrw@state.gov](mailto:o'brienrw@state.gov).

General information about ACICIP and the mission of International Communications and Information Policy at the Department of State is available at our Web site: <http://www.state.gov/e/eeb/adcom/c667.htm>

Dated: March 27, 2007.

**Richard W. O'Brien,**  
*Executive Secretary, ACICIP, Department of State.*

[FR Doc. E7-6292 Filed 4-4-07; 8:45 am]

BILLING CODE 4710-07-P

## DEPARTMENT OF STATE

[Public Notice 5741]

### Announcement of Meetings of the International Telecommunication Advisory Committee

**SUMMARY:** This notice announces meetings of the International Telecommunication Advisory Committee (ITAC) to prepare advice on U.S. positions for two sets of meetings: the meeting of the Organization for Economic Co-operation and Development Working Parties on the Information Economy (WPIE) and on Communications and Infrastructure Services Policy (CISP), and a meeting of the International Telecommunication Union's Study Group 9 (Integrated broadband cable networks and television and sound transmission).

The ITAC will meet on May 3, 10, and 17 from 2-4 p.m. EDT in room 2533a of the Harry S Truman building (Main State), 2201 C Street, Washington, DC to prepare advice for the next meetings of the WPIE and CISP.

The ITAC will meet by conference call at 2 p.m. EDT to prepare advice on proposed USA contributions to ITU-T Study Group 9. Call-in information is available from the secretariat at 202 647-3234.

These meetings are open to the public. Admission to the Department of State, 2201 C Street, Washington, DC requires prior notification to the secretariat (including birth date and an identification number such as driver license or passport) and presentation of a government-issued picture identification card at the entrance. Further information may be obtained from the Secretariat at [minardje@state.gov](mailto:minardje@state.gov), telephone 202 647-3234.

Dated: March 26, 2007.

**Doreen McGirr,**  
*Director of Telecommunication Development, EEB/CIP/Multilateral Affairs, Department of State.*

[FR Doc. E7-6293 Filed 4-4-07; 8:45 am]

BILLING CODE 4710-07-P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Application of Vision Airlines, Inc., for Certificate Authority

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Order To Show Cause (Order 2007-3-24) Docket OST-2004-19518.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Vision Airlines, Inc. fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail.

**DATES:** Persons wishing to file objections should do so no later than.

**ADDRESSES:** Objections and answers to objections should be filed in Docket OST-2004-19518 and addressed to U.S. Department of Transportation, Docket Operations, (M-30, Room PL-401), 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Damon D. Walker, Air Carrier Fitness Division (X-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-7785.

Dated: March 30, 2007.

**Andrew B. Steinberg,**  
*Assistant Secretary for Aviation and International Affairs.*

[FR Doc. E7-6336 Filed 4-4-07; 8:45 am]

BILLING CODE 4910-62-P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket OST-1996-1657]

#### Application of Alaska Central Express, Inc., for Reissuance of Certificate Authority

**AGENCY:** Department of Transportation.

**ACTION:** Notice of order to show cause (Order 2007-3-25).

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Alaska Central Express, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate air transportation of persons, property and mail.

**DATES:** Persons wishing to file objections should do so no later than April 13, 2007.

**ADDRESSES:** Objections and answers to objections should be filed in Docket OST-1996-1657, and addressed to U.S. Department of Transportation, Docket Operations (M-30, Room PL-401), 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Ronale Taylor, Air Carrier Fitness Division (X-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: March 30, 2007.

**Andrew B. Steinberg,**  
*Assistant Secretary for Aviation and International Affairs.*

[FR Doc. E7-6351 Filed 4-4-07; 8:45 am]

BILLING CODE 4910-9X-P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Notice of Order (Order 2007-3- ); Docket OST-2006-25307]

#### International Air Transport Association Tariff Conference Proceeding

**AGENCY:** Office of the Secretary, Department of Transportation.

**SUMMARY:** The Department is issuing an order withdrawing its approval under 49 U.S.C. 41309 for an International Air Transport Association ("IATA") agreement, the Provisions for the Conduct of the IATA Traffic Conferences, insofar as that agreement establishes conferences whereby IATA's member carriers discuss and agree upon passenger fares and cargo rates for U.S.-Australia/Europe markets. The withdrawal of approval will become effective on June 30, 2007. The Department's withdrawal of its approval for the agreement will end the agreement's immunity from the antitrust laws under 49 U.S.C. 41308 for conference discussions of fares and rates for the U.S.-Australia/Europe markets. This order makes final the tentative findings and conclusions set forth in the Department's show-cause order, Order 2006-7-3 (July 5, 2006).

**DATES:** The withdrawal of approval will become effective on June 30, 2007.

**FOR FURTHER INFORMATION CONTACT:** John Kiser, Pricing & Multilateral Affairs Division (X-43, Room 6424), U.S. Department of Transportation, 400 Seventh St, SW., Washington, DC

20590, (202) 366-2435; or Donald A. Horn, Assistant General Counsel for International Law (C-20, Room 10118), U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590, (202) 366-2972.

Dated: March 30, 2007.

**Andrew B. Steinberg,**

*Assistant Secretary for Aviation and International Affairs.*

[FR Doc. E7-6354 Filed 4-4-07; 8:45 am]

**BILLING CODE 4910-9X-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Permanently Change the Use of Airport Property Currently Shown on the Airport Layout Plan From Aeronautical Property to Non-Aeronautical Property at the Boca Raton Airport, Boca Raton, FL

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

**ACTION:** Request for public comment.

**SUMMARY:** The Federal Aviation Administration is requesting public comment on Boca Raton Airport Authority's (BRAA) request to change +/- 4.67 acres of airport property from aeronautical use to non-aeronautical use. The parcel in question is the last remaining parcel of aeronautical land available at the Boca Raton Airport. The property in question is on the east side of Airport Road and approximately 1 mile north of Glades Road between the Premiere leasehold and the Fairfield Inn leasehold. The BRAA intends to use the property to develop an office building and possible restaurant(s). Portions of the building would house BRAA office, while the remainder would be leased to third party tenants for revenue generation. Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Airport Manager's office and the FAA Airport District Office.

**DATES:** Comments must be received on or before May 7, 2007.

**ADDRESSES:** Documents are available for review at the Airport Manager's office by contacting Mr. Ken A. Day, Airport Manager, 3700 Airport Road; Suite #305, Boca Raton, Florida 33431 or at (541) 391-2202. Documents are also available at the FAA Orlando Airport District Office by contacting Mr. Dean Stringer, Manager, 5950 Hazeltine National Drive; Suite 400, Orlando Florida 32822 or at (407) 812-6331, extension 117. Written comments on the Sponsor's request must be delivered or mailed, to: Mr. Miguel A. Martinez,

Program Manager, 5950 Hazeltine National Drive; Suite 400, Orlando Florida 32822 or at (407) 812-6331, extension 123.

**FOR FURTHER INFORMATION CONTACT:** Mr. Miguel A. Martinez, Program Manager, 5950 Hazeltine National Drive; Suite 400, Orlando Florida 32822 or at (407) 812-6331, extension 123.

**SUPPLEMENTARY INFORMATION:** Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) requires the FAA to provide an opportunity for public notice and comment prior to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport land for aeronautical purposes. Currently the parcel is designated as Aviation Support on the Airport Layout Plan but does not have direct access to the taxiway/runway system. Aviation uses requiring airfield access to the taxiway/runway system may not be physically possible without obtaining easements across adjoining leased properties.

**W. Dean Stringer,**

*Manager, Orlando Airports District Office, Southern Region.*

[FR Doc. 07-1664 Filed 4-4-07; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice Before Waiver With Respect to Land at Leesburg Executive Airport, Leesburg, VA

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

**ACTION:** Notice of intent of waiver with respect to land.

**SUMMARY:** The FAA is publishing notice of proposed release from aeronautical use of approximately 1.39 acres of land at the Leesburg Executive Airport, Leesburg, Virginia to the Town of Leesburg. The release will facilitate the construction of the Battlefield Parkway that will improve access to the airport and will permit the construction of a standard runway safety area for Runway 17. There are not impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan.

**DATES:** Comments must be received on or before May 7, 2007.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Terry J. Page, Manager, FAA Washington Airports District Office,

23723 Air Freight Lane, Suite 210, Dulles, VA 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Timothy B. Deike, Director Leesburg Executive Airport, at the following address: Mr. Timothy B. Deike, Director, Leesburg Executive Airport, 1001 Sycolin Road, SE., Leesburg, Virginia 20175.

**FOR FURTHER INFORMATION CONTACT:** Mr. Terry Page, Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166; telephone (703) 661-1354, fax (703) 661-1370, e-mail [Terry.Page@faa.gov](mailto:Terry.Page@faa.gov).

**SUPPLEMENTARY INFORMATION:** On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation investment and Reform Act for the 21st Century, Public Law 10-181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30 day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Dated: Issued in Chantilly, Virginia on March 14, 2007.

**Terry J. Page,**

*Manager, Washington Airports District Office, Eastern Region.*

[FR Doc. 07-1663 Filed 4-4-07; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Agency Information Collection Activity Seeking OMB Approval

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

**ACTION:** Notice.

**SUMMARY:** The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 5, 2006, vol. 71, no. 233, page 70578. This information is needed to meet the requirements of Title 49, Section 40117(k), Competition Plans, and to carry out a passenger facility charge application.

**DATES:** Please submit comments by May 7, 2007.

**FOR FURTHER INFORMATION CONTACT:** Carla Mauney at [Carla.Mauney@faa.gov](mailto:Carla.Mauney@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Federal Aviation Administration (FAA)**

*Title:* Competition Plans, Passenger Facility Charges.

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

*OMB Control Number:* 2120-0661.

*Form(s):* There are no FAA forms associated with this collection.

*Affected Public:* An estimated 40 Respondents.

*Frequency:* This information is collected on occasion.

*Estimated Average Burden Per Response:* Approximately 136 hours per response.

*Estimated Annual Burden Hours:* An estimated 680 hours annually.

*Abstract:* This information is needed to meet the requirements of Title 49, Section 40117(k), Competition Plans, and to carry out a passenger facility charge application. No Passenger Facility Charge (PFC) may be approved for a covered airport and no Airport Improvement Program (AIP) grant maybe made for a covered airport without unless the airport has submitted a written competition plan in accordance with the statute. The affected public includes public agencies controlling medium or large hub airports.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: Issued in Washington, DC, on March 29, 2007.

**Carla Mauney,**

*FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO-20.*

[FR Doc. 07-1665 Filed 4-4-07; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration**

[FMCSA Docket No. FMCSA-2003-25290]

**Commercial Driver's License (CDL) Standards; Isuzu Motors America, Inc.'s Exemption Application**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition; granting of application for exemption.

**SUMMARY:** FMCSA announces its decision to approve Isuzu Motors America, Inc.'s (Isuzu) application for an exemption for 76 of its drivers to enable them to test-drive commercial motor vehicles (CMVs) in the United States without a commercial driver's license (CDL) issued by one of the States. The Isuzu CMVs are prototypes that require testing under U.S. climatic conditions prior to being placed on the U.S. market. Each of these drivers holds a CDL issued in Japan, but lacks the U.S. residency necessary to obtain a CDL issued by one of the States of the United States. FMCSA believes the knowledge and skills testing and training program that drivers must undergo to obtain a Japanese CDL ensures that these drivers will achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

**DATES:** This decision is effective April 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, MC-PSD, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Telephone: 202-366-4009. E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov).

**SUPPLEMENTARY INFORMATION:****Background**

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the CDL requirements in 49 CFR 383.23 for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption" (49 CFR 381.305 (a)). FMCSA has evaluated Isuzu's application on its merits and decided to grant the exemption for 76 of Isuzu's engineers and technicians for a two-year period.

*Isuzu Application for an Exemption*

Isuzu applied for an exemption from the requirement that the operator of a CMV obtain a CDL, specifically 49 CFR 383.23. This section of the Federal Motor Carrier Safety Regulations (FMCSRs) sets forth the standards that States must employ in issuing CDLs to drivers operating in commerce. In the United States, an individual must be a resident of a State in order to qualify for a CDL;<sup>1</sup> the Isuzu drivers for whom this exemption is sought are all residents of Japan. A copy of the request for exemption from section 383.23 is in the docket identified at the beginning of this notice.

*Japanese Drivers*

This exemption enables the following drivers to test-drive CMVs in the U.S.: Aihara Hirokazu, Akira Iiduka, Akira Yoshino, Atsushi Hirotsu, Atsushi Yamazaki, Chito Agatsuma, Fuki Yokoyama, Fumiaki Kubo, Fumiaki Takei, Fuyuki Hamanaka, Go Shinozuka, Hideki Shibata, Hiroaki Kurata, Hiroaki Takahashi, Hiromasa Narita, Hiroshi Osada, Hiroyoshi Morohoshi, Hisashi Hashiguchi, Ichirou Watanabe, Jirou Arai, Junichi Yamada, Jyunichi Suda, Kakuya Sekimoto, Kazuhiro Itou, Kazuhiro Teraguchi, Kazuyoshi Tateishi, Ken Ueda, Kenji Takashima, Kiyoaki Nokura, Kiyoshi Toshima, Kohki Natsumi, Manabu Andou, Masaaki Toriyama, Masahiko Gotou, Masahito Katou, Masayuki Tanaka, Minoru Endou, Misturu Denpouy, Mitsugu Sugiura, Motoyuki Kamo, Naoki Morimoto, Naomi Uchida, Naoyuki Itou, Noboru Azuma, Nobuhisa Okuda, Nobuyuki Iwao, Ryo Sato, Ryouji Matsuzawa, Satoshi Yatomi, Shigeo Shimada, Shinya Ishida, Syouji Takahashi, Tadao Shibuya, Tadashi Shoda, Takahiro Maemoto, Takashi Oguma, Takatomo Omukai, Takauki Asaoka, Takayuki Kaneda, Takeshi Kamei, Tatsumi Wakamori, Tatsuya Kawase, Tatsuya Sakata, Tetsuji Oshima, Tetuya Hiromatsu, Toshiaki Shimizu, Toshihiko Sudo, Tsuchida Minoru, Tsugio Fujita, Yasuhiro Sakai, Yasuo Tamamoto, Yasuyuki Fujita, Yoshiaki Miyamoto, Yoshinori Kunieda, Yoshinori Ugai and Youichi Kurita.

Collectively, these drivers form a team of engineers and technicians. Isuzu currently employs these drivers in Japan, and wants them to be able to operate CMVs in the U.S. for the purpose of testing and evaluating production and prototype Isuzu CMVs

<sup>1</sup> Although 49 CFR 393.23 indicates that these drivers could obtain a Nonresident CDL, few States are currently issuing Nonresident CDLs due to security concerns.

to be sold for use on U.S. highways. The drivers are experienced CMV operators with valid Japanese-issued CDLs. Because each of the drivers was required to satisfy strict CDL testing standards in Japan to obtain a CDL, and has extensive training and experience operating CMVs, Isuzu believes that the exemption will maintain a level of safety equivalent to the level of safety that would be obtained absent the exemption.

#### *Method To Ensure an Equivalent or Greater Level of Safety*

Drivers in Japan must hold a conventional driver's license for at least three years before applying to obtain a Japanese-issued CDL. At that point, they must take and pass both a knowledge test and a skills test in order to obtain a license to operate CMVs. These tests thoroughly assess the driver's ability to operate a CMV, and are comparable to the tests administered to CDL applicants in the United States. Once a driver is granted a Japanese CDL, he or she is allowed to drive any CMV currently allowed on Japanese roads. There are no limits to types or weights of vehicles that may be operated by the drivers.

Therefore, the process for obtaining a Japanese-issued CDL is considered to be comparable to, or as effective as, the requirements of 49 CFR part 383.

#### **Comments**

The Agency received one comment in response to its request for public comments (71 FR 42170, July 25, 2006). The commenter recommended that Isuzu use U.S. drivers for this testing. The commenter did not provide a substantive basis for this opinion. The docket number of this matter is referenced at the beginning of this notice.

#### **FMCSA Decision**

The FMCSA decision to grant these drivers an exemption from section 383.23 is based on the merits of the application for exemption, the rigorous knowledge and skills testing of Japanese drivers concerning the safe operation of CMVs, and consideration of the comment submitted in response to the public notice.

#### **Terms and Conditions for the Exemption**

After considering the comment to the docket and based upon evaluation of the application for an exemption, FMCSA grants Isuzu an exemption from the Federal commercial driver's license requirement in 49 CFR 383.23 for 76 drivers, identified under the "Japanese

Drivers" heading above, to test-drive CMVs within the United States, subject to the following terms and conditions: (1) That these drivers will be subject to drug and alcohol regulations, including testing, as provided in 49 CFR part 382, (2) that these drivers are subject to the same driver disqualification rules under 49 CFR parts 383 and 391 that apply to other CMV drivers in the U.S., (3) that these drivers keep a copy of the exemption on the vehicle at all times, (4) that Isuzu notify FMCSA in writing of any accident, as defined in 49 CFR 390.5, involving one of the exempted drivers, and (5) that Isuzu notify FMCSA in writing if any driver is convicted of a disqualifying offense described in section 383.51 or 391.15 of the FMCSRs.

In accordance with 49 U.S.C. 31315 and 31136(e), the exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The drivers for Isuzu fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136.

Issued on: March 30, 2007.

**John H. Hill,**

*Administrator.*

[FR Doc. E7-6240 Filed 4-4-07; 8:45 am]

**BILLING CODE 4910-EX-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Maritime Administration**

#### **Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review**

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the information collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 3, 2007. No comments were received.

**DATES:** Comments must be submitted on or before May 7, 2007.

#### **FOR FURTHER INFORMATION CONTACT:**

Thomas Christensen, Maritime Administration, 400 7th Street, SW., Washington, DC 20590. *Telephone:* (202) 366-5900, *FAX:* (202) 488-0941 or *E-Mail:* tom.christensen@dot.gov. Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:** Maritime Administration (MARAD).

*Title:* Voluntary Tanker Agreement.

*OMB Control Number:* 2133-0505.

*Type of Request:* Extension of currently approved collection.

*Affected Public:* Owners of tanker companies who operate in international trade and who have agreed to participate in this agreement.

*Forms:* None.

*Abstract:* The collection consists of a request from MARAD that each participant in the Voluntary Tanker Agreement submit a list of the names of ships owned, chartered, or contracted for by the participant, and their size and flags of registry. There is no prescribed format for this information.

*Annual Estimated Burden Hours:* Fifteen hours (one hour per respondent).

*Addressee:* Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, *Attention:* MARAD Desk Officer.

*Comments Are Invited On:* 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on March 21, 2007.

**Daron T. Threet,**

*Secretary, Maritime Administration.*

[FR Doc. E7-6309 Filed 4-4-07; 8:45 am]

**BILLING CODE 4910-81-P**

**DEPARTMENT OF TRANSPORTATION****Surface Transportation Board****[STB Docket No. MC-F-21020]****Firstgroup PLC—Acquisition—Laidlaw International, Inc.****AGENCY:** Surface Transportation Board, DOT.**ACTION:** Notice tentatively approving finance transaction.

**SUMMARY:** On March 8, 2007, FirstGroup plc (FirstGroup), a noncarrier in control of one or more motor carriers of passengers, filed an application under 49 U.S.C. 14303 to acquire Laidlaw International, Inc. (Laidlaw), a noncarrier in control of one or more motor carriers of passengers.<sup>1</sup> Persons wishing to oppose this application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

**DATES:** Comments must be filed by May 21, 2007. Applicant may file a reply by June 4, 2007. If no comments are filed by May 21, 2007, this notice is effective on that date.

**ADDRESSES:** Send an original and 10 copies of any comments referring to STB Docket No. MC-F-21020 to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, send one copy of comments to the applicant's representative: Fritz R. Kahn, 1920 N Street, NW., 8th Floor, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Julia Farr (202) 245-0359 [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339].

**SUPPLEMENTARY INFORMATION:**

FirstGroup is a public limited company organized under the laws of Scotland, U.K. It is the largest bus operator and largest passenger rail operator in the United Kingdom. FirstGroup's North American operations, First Student, Inc. (MC-191534) and First Transit, Inc. (First Transit)<sup>2</sup> (MC-576222) are

<sup>1</sup> As supplemented by facsimile received on March 14, 2007.

<sup>2</sup> In 2006 First Transit purchased Cognisa Transportation, Inc. (Cognisa), a transit service provider registered as a motor carrier rendering special and charter operations pursuant to authority granted in MC-548215. Cognisa has been merged into First Transit. Board authorization was not sought at the time of the transaction. FirstGroup asks the Board, as part of this transaction, to approve the acquisition of Cognisa by First Transit. In support of this request, FirstGroup has provided, in the supplemental filing, uncertified information that is insufficient under the requirements of 49 CFR 1182.2 to support Board authorization of this

controlled by FirstGroup America, Inc., a wholly owned subsidiary of FirstGroup USA, Inc.; and First Services, Inc. is wholly owned by FirstGroup USA, Inc.

Laidlaw is a noncarrier holding company, with operations conducted by its subsidiaries: Laidlaw Transit, Inc., d/b/a Laidlaw Education Services (MC-161299); Laidlaw Transit Services, Inc. (MC-163344); and Greyhound Lines, Inc. (MC-1515), Greyhound Canada Transportation Corp. (MC-304126) and subsidiaries (collectively Greyhound).<sup>3</sup>

The gross operating revenues of FirstGroup and Laidlaw exceed \$2 million annually. Under the terms of the Acquisition Agreement, FirstGroup has agreed to acquire Laidlaw by way of a merger of FirstGroup Acquisition Corporation<sup>4</sup> (a newly incorporated Delaware corporation and a wholly owned subsidiary of FirstGroup) with and into Laidlaw. On completion of the acquisition, Laidlaw will become a wholly owned subsidiary of FirstGroup and, as in the past, will continue to conduct operations through its subsidiaries.

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction found to be consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

FirstGroup and Laidlaw have submitted information, as required by 49 CFR 1182.2, including the information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). Applicant states that the proposed transaction will have no impact on the adequacy of transportation services available to the public, that the proposed transaction will not have an adverse effect on total fixed charges, and that the interests of

transaction. Accordingly, we deny FirstGroup's request for authorization and we inform FirstGroup that it must file a new complete application under 49 CFR 1182 to authorize First Transit's acquisition of Cognisa.

<sup>3</sup> Greyhound has eight affiliates in the United States rendering scheduled intercity, special and charter bus transportation: Americanos U.S.A., L.L.C. (MC-309813); Carolina Coach Company (MC-13300); Crucero U.S.A., L.L.C. (MC-438895); Hotard Coaches, Inc. (MC-143881); Mississippi Coast Limousine, Inc., d/b/a Coastliner (MC-133182); Texas, New Mexico and Oklahoma Coaches, Inc. (MC-61120); Valley Transit Company (MC-74); and Vermont Transit Co., Inc. (MC-45626).

<sup>4</sup> By letter filed on March 20, 2007, the name of the company was changed from Fern Acquisition Vehicle Corporation to FirstGroup Acquisition Corporation. The corporate structure of FirstGroup and the proposed transaction have not changed.

employees of Laidlaw will not be adversely impacted. Additional information, including a copy of the application, may be obtained from the applicant's representative.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated, and unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. See 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

*It is ordered:*

1. The proposed finance transaction is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this notice will be deemed as having been vacated.

3. This notice will be effective May 21, 2007, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 7th Street, SW., Room 8214, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

Decided: March 30, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. E7-6380 Filed 4-4-07; 8:45 am]

**BILLING CODE 4915-01-P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Open Meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, May 10, 2007 at 2 p.m. ET.

**FOR FURTHER INFORMATION CONTACT:** Inez De Jesus at 1-888-912-1227, or 954-423-7977.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be held Thursday, May 10, 2007 at 2 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 954-423-7977, or write to Inez De Jesus, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez De Jesus. Ms. De Jesus can be reached at 1-888-912-1227 or 954-423-7977, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include: Various IRS issues.

Dated: March 29, 2007.

**John Fay,**  
*Acting Director, Taxpayer Advocacy Panel.*  
[FR Doc. E7-6282 Filed 4-4-07; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, and Arkansas, and the Territory of Puerto Rico)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, May 15, 2007 at 11:30 a.m. ET.

**FOR FURTHER INFORMATION CONTACT:** Sallie Chavez at 1-888-912-1227, or 954-423-7979.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Tuesday, May 15, 2007 at 11:30 a.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 954-423-7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1-888-912-1227 or 954-423-7979, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include: Various IRS issues.

Dated: March 29, 2007.

**John Fay,**  
*Acting Director, Taxpayer Advocacy Panel.*  
[FR Doc. E7-6284 Filed 4-4-07; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, and West Virginia and the District of Columbia)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, May 16, 2007 at 2:30 p.m. ET.

**FOR FURTHER INFORMATION CONTACT:** Inez E. De Jesus at 1-888-912-1227, or 954-423-7977.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, May 16, 2007 at 2:30 p.m.

ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 954-423-7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1-888-912-1227 or 954-423-7977, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include the following: Various IRS issues.

Dated: March 29, 2007.

**John Fay,**  
*Acting Director, Taxpayer Advocacy Panel.*  
[FR Doc. E7-6285 Filed 4-4-07; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, May 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Dave Coffman at 1-888-912-1227, or 206-220-6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be held Tuesday, May 1, 2007 from 9 a.m. to 10:30 a.m. Pacific Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 206-220-6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W-406, Seattle, WA 98174 or you can contact us at <http://www.improveirs.org>.

Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made

with Dave Coffman. Mr. Coffman can be reached at 1-888-912-1227 or 206-220-6096.

The agenda will include the following: Various IRS issues.

Dated: March 29, 2007.

**John Fay,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E7-6289 Filed 4-4-07; 8:45 am]

**BILLING CODE 4830-01-P**

# Corrections

Federal Register

Vol. 72, No. 65

Thursday, April 5, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 40

[Docket ID OCC-2007-0003]

RIN 1557-AC80

## FEDERAL RESERVE SYSTEM

#### 12 CFR Part 216

[Docket No. R-1280]

## FEDERAL DEPOSIT INSURANCE CORPORATION

#### 12 CFR Part 332

RIN 3064-AD16

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

#### 12 CFR Part 573

[Docket ID OTS-2007-0005]

RIN 1550-AC12

## NATIONAL CREDIT UNION ADMINISTRATION

#### 12 CFR Part 716

RIN 3133-AC84

## FEDERAL TRADE COMMISSION

#### 16 CFR Part 313

[Project No. 034815]

RIN 3084-AA94

## COMMODITY FUTURES TRADING COMMISSION

#### 17 CFR Part 160

RIN 3038-AC04

## SECURITIES AND EXCHANGE COMMISSION

#### 17 CFR Part 248

[Release Nos. 34-55497, IA-2598, IC-27755; File No. S7-09-07]

RIN 3235-AJ06

### Interagency Proposal for Model Privacy Form Under the Gramm-Leach-Bliley Act

#### *Correction*

In proposed rule document 07-1476 beginning on page 14939 in the issue of Thursday, March 29, 2007, make the following corrections:

On pages 14948, 14963, 14968, 14973, 14978, 14983, 14988, 14993 and 14998, the corrected "Model Privacy Form, p. 3 of 3" appears as follows:

**F A C T S**

**WHAT DOES [name of financial institution] DO WITH YOUR PERSONAL INFORMATION?**

**If you want to limit our sharing**

<b>Contact us</b>	<p><b>By telephone:</b> [toll-free telephone] — our menu will prompt you through your choices</p> <p><b>On the web:</b> [web address]</p> <p><b>By mail:</b> mark your choices below, fill in and send form to: [mailing address]</p> <p><b>Unless we hear from you, we can begin sharing your information 30 days from the date of this letter. However, you can contact us at any time to limit our sharing.</b></p>
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**Check your choices**

<i>Your choices will apply to everyone on your account.</i>	<p><b>Check any/all you want to limit:</b> (See page 1)</p> <p><input type="checkbox"/> Do not share information about my creditworthiness with your affiliates for their everyday business purposes.</p> <p><input type="checkbox"/> Do not allow your affiliates to use my personal information to market to me. (I will receive a renewal notice for this use for marketing in 5 years.)</p> <p><input type="checkbox"/> Do not share my personal information with nonaffiliates to market their products and services to me.</p>													
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# Federal Register

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**Thursday,  
April 5, 2007**

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**Part II**

## **Department of the Treasury**

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**Internal Revenue Service**

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**26 CFR Parts 1 and 11  
Limitations on Benefits and Contributions  
Under Qualified Plans; Final Rule**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Parts 1 and 11**

[TD 9319]

RIN 1545-BD52

**Limitations on Benefits and Contributions Under Qualified Plans****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations under section 415 of the Internal Revenue Code (Code) regarding the limitations of section 415, including updates to the regulations for numerous statutory changes since comprehensive final regulations were last published under section 415. The final regulations also make conforming changes to regulations under sections 401(a), 401(a)(9), 401(k), 402, 416, and 457, and make other minor corrective changes to regulations under sections 401(a)(4), 414(s), 457, and 924. These regulations affect administrators of, participants in, and beneficiaries of qualified employer plans and certain other retirement plans.

**DATES:** *Effective Date:* These regulations are effective April 5, 2007.

*Applicability Dates:* These regulations generally apply for limitation years beginning on or after July 1, 2007. See §§ 1.401(k)-1(e)(8), 1.415(a)-1(g), 1.457-6(c)(2)(i), and 1.457-12 regarding the applicability dates of these regulations.

**FOR FURTHER INFORMATION CONTACT:**

Vernon S. Carter at (202) 622-6060 or Linda S.F. Marshall at (202) 622-6090 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:****Background**

This document contains amendments to the Income Tax Regulations (26 CFR Parts 1 and 11) under section 415 of the Code relating to limitations on benefits and contributions under qualified plans. In addition, this document contains conforming amendments to the Income Tax Regulations under sections 401(a) (including section 401(a)(9)), 401(k), 402, 416, and 457, as well as minor corrective changes to the regulations under section 457 and changes to other regulations under sections 401(a) (including section 401(a)(4)), 414(s), and 924 to update cross-references to the final regulations under section 415.

Section 415 was added to the Code by the Employee Retirement Income Security Act of 1974 (88 Stat. 829),

Public Law 93-406 (ERISA), and has been amended many times since. Section 415 provides a series of limits on benefits under qualified defined benefit plans and on contributions and other additions under qualified defined contribution plans. See also section 401(a)(16). Pursuant to section 415(a)(2), the limitations of section 415 also apply to section 403(b) annuity contracts and to simplified employee pensions described in section 408(k) (SEPs). In addition, the limitations of section 415 for defined contribution plans apply to contributions allocated to any individual medical account that is part of a pension or annuity plan established pursuant to section 401(h) and to amounts attributable to medical benefits allocated to an account under a welfare benefit fund established for a key employee pursuant to section 419A(d)(1).

Section 404(j) provides generally that, in computing the amount of any deduction for contributions under a qualified plan, benefits and annual additions in excess of the applicable limitations under section 415 are not taken into account. In addition, in computing the applicable limits on deductions for contributions to a defined benefit plan, and in computing the full funding limitation, an adjustment under section 415(d)(1) is not taken into account for any year before the year for which that adjustment first takes effect.

The definition of compensation that is used for purposes of section 415 is also used for a number of other purposes under the Code. Under section 219(b)(3), contributions on behalf of an employee to a plan described in section 501(c)(18) are limited to 25 percent of compensation as defined in section 415(c)(3). Section 404(a)(12) provides that, for various specified purposes in determining deductible limits under section 404, the term *compensation* includes amounts treated as participant's compensation under section 415(c)(3)(C) or (D). Pursuant to section 409(b)(3), for purposes of determining whether employer securities are allocated proportionately to compensation in accordance with the rules of section 409(b)(1), the amount of compensation paid to a participant for any period is the amount of such participant's compensation (within the meaning of section 415(c)(3)) for such period. Under section 414(q)(4), for purposes of determining whether an employee is a highly compensated employee within the meaning of section 414(q), the term compensation has the meaning given such term by section 415(c)(3). Section 414(s), which defines

the term compensation for purposes of certain qualification requirements, generally provides that the term compensation has the meaning given such term by section 415(c)(3). Under section 416(c)(2), allocations to participants who are non-key employees under a top-heavy plan that is a defined contribution plan are required to be at least 3 percent of the participant's compensation (within the meaning of section 415(c)(3)). Pursuant to section 457(e)(5), the term *includible compensation*, which is used in limiting the amount that can be deferred for a participant under an eligible deferred compensation plan as defined in section 457(b), has the same meaning as the term participant's compensation under section 415(c)(3).

Comprehensive regulations regarding section 415 were last issued in 1981. See TD 7748, published in the **Federal Register** on January 7, 1981 (46 FR 1687). Since then, changes to section 415 have been made in the Economic Recovery Tax Act of 1981, Public Law 97-34 (95 Stat. 320) (ERTA), the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248 (96 Stat. 623) (TEFRA), the Deficit Reduction Act of 1984, Public Law 98-369 (98 Stat. 494) (DEFRA), the Tax Reform Act of 1986, Public Law 99-514 (100 Stat. 2481) (TRA '86), the Technical and Miscellaneous Revenue Act of 1988, Public Law 100-647 (102 Stat. 3342) (TAMRA), the Uruguay Round Agreements Act of 1994, Public Law 103-465 (108 Stat. 4809) (GATT), the Small Business Job Protection Act of 1996, Public Law 104-188 (110 Stat. 1755) (SBJPA), the Community Renewal Tax Relief Act of 2000, Public Law 106-554 (114 Stat. 2763) (CRA), the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107-16 (115 Stat. 38) (EGTRRA), the Job Creation and Worker Assistance Act of 2002, Public Law 107-147 (116 Stat. 21) (JCWAA), the Pension Funding Equity Act of 2004, Public Law 108-218 (118 Stat. 596) (PFEA), the Working Families Tax Relief Act of 2004, Public Law 108-311 (118 Stat. 1166) (WFTRA), the Gulf Opportunity Zone Act of 2005, Public Law 109-135 (119 Stat. 2577) (GOZA), and the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780) (PPA '06).

Although some limited changes to the regulations were made after 1981, most of the statutory changes made since that time are not reflected in the regulations, but in IRS notices, revenue rulings, and other guidance of general applicability, as follows:

- Notice 82-13 (1982-1 CB 360) (see § 601.601(d)(2)) provides guidance on

deductible employee contributions (including guidance under section 415) to reflect the addition of provisions relating to deductible employee contributions in ERTA.

- Notice 83-10 (1983-1 CB 536) (see § 601.601(d)(2)) provides guidance on the changes to section 415 made by TEFRA. The TEFRA changes were extensive, and included reductions of the dollar limits on annual benefits under a defined benefit plan and annual additions under a defined contribution plan, changes to the age and form adjustments made in the application of the limits under a defined benefit plan, and rules regarding the deductibility of contributions with respect to benefits that exceed the applicable limitations of section 415.

- Notice 87-21 (1987-1 CB 458) (see § 601.601(d)(2)) provides guidance on the changes to section 415 made by TRA '86. The TRA '86 changes modified the rules for the indexing of the dollar limit on annual additions under a defined contribution plan, the treatment of employee contributions as annual additions, and the rules for age adjustments under defined benefit plans, and added a phase-in of the section 415(b)(1)(A) dollar limitation over 10 years of participation, as well as rules permitting the limitations of section 415 to be incorporated by reference under the terms of a plan.

- Rev. Rul. 98-1 (1998-1 CB 249) (modifying and superseding Rev. Rul. 95-29, 1995-1 CB 81) (see § 601.601(d)(2)) provides guidance regarding certain form and age adjustments under a defined benefit plan pursuant to changes made by GATT (as modified under SBIPA), including transition rules relating to those adjustments.

- Notice 99-44 (1999-2 CB 326) (see § 601.601(d)(2)) provides guidance regarding the repeal under SBIPA of the limitation on the combination of a defined benefit plan and a defined contribution plan under former section 415(e).

- Notice 2001-37 (2001-1 CB 1340) (see § 601.601(d)(2)) provides guidance regarding the inclusion of salary reduction amounts for qualified transportation fringe benefits in the definition of compensation for purposes of section 415, as provided under CRA.

- Rev. Rul. 2001-51 (2001-2 CB 427) (see § 601.601(d)(2)) provides guidance relating to the increases in the limitations of section 415 for both defined benefit and defined contribution plans, which were enacted as part of EGTRRA.

- Rev. Rul. 2001-62 (2001-2 CB 632) (superseding Rev. Rul. 95-6, 1995-1 CB

80) (see § 601.601(d)(2)) provides mortality tables to be used to make certain form adjustments to benefits under a defined benefit plan for purposes of applying the limitations of section 415, pursuant to the requirement to use a specified mortality table added by GATT.

- Notice 2002-2 (2002-1 CB 285) (see § 601.601(d)(2)) provides guidance regarding the treatment of reinvested employee stock ownership plan (ESOP) dividends under section 415(c), to reflect changes made by SBIPA.

- Rev. Rul. 2002-27 (2002-1 CB 925) (see § 601.601(d)(2)) provides guidance pursuant to which a definition of compensation can be used for purposes of applying the limitations of section 415 even if that definition treats certain specified amounts that may not be available to an employee in cash as subject to section 125 (and therefore included in compensation).

- Rev. Rul. 2002-45 (2002-2 CB 116) (see § 601.601(d)(2)) provides guidance regarding the treatment of certain payments to defined contribution plans to restore losses resulting from actions by a fiduciary for which there is a reasonable risk of liability for breach of a fiduciary duty (including the treatment of those payments under section 415).

- Notice 2004-78 (2004-2 CB 879) (see § 601.601(d)(2)) provides guidance regarding the actuarial assumptions that must be used for distributions with annuity starting dates occurring during plan years beginning in years 2004 and 2005 to determine whether an amount payable under a defined benefit plan in a form that is subject to the minimum present value requirements of section 417(e)(3) satisfies the requirements of section 415. This guidance reflects changes made in PFEA.

For copies of recently issued Revenue Procedures, Revenue Rulings, Notices, and other guidance published in the Internal Revenue Bulletin or the Cumulative Bulletin, please visit the IRS Web site at <http://www.irs.gov>.

Some previously issued guidance has been superseded by subsequent statutory changes. For example, the simplified actuarial adjustment factors formerly permitted to be used to adjust certain forms of benefit for purposes of applying the limitations of section 415(b) pursuant to Rev. Rul. 80-253 (1980-2 CB 159) (see § 601.601(d)(2)) were not permitted to be used after statutory changes imposed the use of specified actuarial assumptions to make these adjustments. In addition, the projected post-retirement adjustments to the section 415(b)(1)(B) compensation limit that were required to be taken into

account for purposes of sections 404 and 412 under Rev. Rul. 81-195 (1981-2 CB 104) (see § 601.601(d)(2)) were not required or permitted to be taken into account for those purposes following the addition of section 404(j) in TEFRA.

The Treasury Department and the IRS believe that a single restatement of the section 415 rules serves the interests of plan sponsors, third-party administrators, plan participants, and plan beneficiaries. On May 31, 2005, a notice of proposed rulemaking (REG-130241-04) was published in the **Federal Register** (70 FR 31214) to issue new regulations under section 415 (the proposed regulations). The guidance items described in this preamble were reflected in the proposed regulations with some modifications. In addition, the proposed regulations reflected other statutory changes not previously addressed by guidance, and included some other changes and clarifications to the 1981 regulations. To the extent practicable, the preamble to the proposed regulations identified and explained substantive changes from the 1981 regulations or existing guidance.

Following publication of the proposed regulations, comments were received and a public hearing was held on August 17, 2005. Subsequently, Notice 2005-87 (2005-2 CB 1097) (see § 601.601(d)(2)) was issued to address certain concerns about the effective date provisions of the proposed regulations. After consideration of the comments received, the proposed regulations are adopted by this Treasury decision, subject to a number of changes that are summarized in the preamble.

## Explanation of Provisions

### Overview

These regulations reflect the numerous statutory changes to section 415 and related provisions that have been made since 1981. Some of the statutory changes reflected in the regulations are as follows:

- The current statutory limitations under sections 415(b)(1)(A) and 415(c)(1) applicable for defined benefit and defined contribution plans, respectively, as most recently amended by EGTRRA.

- Changes to the rules for age adjustments to the applicable limitations under defined benefit plans, under which the dollar limitation is adjusted for commencement before age 62 or after age 65.

- Changes to the rules, including specification of parameters, for benefit adjustments under defined benefit plans.

- The phase-in of the dollar limitation under section 415(b)(1)(A) over 10 years of participation, as added by TRA '86.
- The addition of the section 401(a)(17) limitation on compensation that is permitted to be taken into account in determining plan benefits, as added by TRA '86, and the interaction of this requirement with the limitations under section 415.
- Exceptions to the compensation-based limitation under section 415(b)(1)(B) for governmental plans and multiemployer plans.
- Changes to the aggregation rules under section 415(f) under which multiemployer plans are not aggregated with single-employer plans for purposes of applying the compensation-based limitation of section 415(b)(1)(B) to a single-employer plan.
- The repeal under SBJPA of the section 415(e) combined limitation on participation in a defined benefit plan and a defined contribution plan.
- The changes to section 415(c) that were made in conjunction with the repeal under EGTRRA of the exclusion allowance under section 403(b)(2).
- The current rounding and base period rules for annual cost-of-living adjustments pursuant to section 415(d), as most recently amended in EGTRRA and WFTRA.
- Changes to section 415(c) under which certain types of arrangements are no longer subject to the limitations of section 415(c) (such as individual retirement accounts other than SEPs) and other types of arrangements have become subject to the limitations of section 415(c) (such as certain individual medical accounts).
- The inclusion in compensation (for purposes of section 415) of certain salary reduction amounts not included in gross income.
- The modification for distributions with annuity starting dates in plan years beginning in years 2004 and 2005 made by PFEA with respect to the interest rate assumptions in section 415(b)(2)(E) for converting certain forms of benefits to an actuarially equivalent straight life annuity.
- The following modifications to section 415 that were made by PPA '06: (i) Changes to the interest rate assumptions in section 415(b)(2)(E) that are used for converting certain forms of benefits to an equivalent straight life annuity (section 303 of PPA '06); (ii) elimination of the active participation requirement in determining a participant's high-3 years of service in section 415(b)(3) (section 832 of PPA '06); (iii) exemption from the section 415(b)(1)(B) compensation limit for

certain benefits provided under a defined benefit plan maintained by an organization described in section 3121(w)(3)(A) (section 867 of PPA '06); and (iv) expansion of the definition of qualified participant in section 415(b)(2)(H) to include certain participants in a defined benefit plan maintained by an Indian tribal government (section 906(b) of PPA '06).

These regulations provide specific rules regarding when amounts received following severance from employment are considered compensation for purposes of section 415, and when such amounts are permitted to be deferred pursuant to section 401(k) or section 457(b). These regulations generally provide that amounts received following severance from employment are not considered to be compensation for purposes of section 415, but provide exceptions for certain payments made by the later of 2½ months following severance from employment or the end of the year in which the severance occurs. These regulations include corresponding changes to the regulations under sections 401(k) and 457 that provide that amounts payable following severance from employment can only be deferred if those amounts are within these same exceptions.<sup>1</sup> The rule pursuant to which compensation received after severance from employment is not considered compensation for purposes of section 415 generally does not apply to payments to an individual in qualified military service. The rules governing amounts received following severance from employment are discussed in this preamble in more detail under the paragraph heading “§ 1.415(c)-2: Definition of compensation.”

#### *Provisions of the Regulations*

##### *General Rules (§ 1.415(a)-1)*

Section 1.415(a)-1 of these regulations sets forth general rules relating to limitations under section 415 and provides an overview of the remaining regulations, including cross-references to special rules that apply to section 403(b) annuities, multiemployer plans, governmental plans, and plans that are not subject to the requirements of section 411. In addition, § 1.415(a)-1 provides rules for a plan's incorporation by reference of the rules of section 415 pursuant to section 1106(h) of TRA '86 (including detailed guidelines regarding

incorporation by reference of the annual cost-of-living adjustments to the statutory limits and the application of default rules), rules for plans maintained by more than one employer, a definition of the term “severance from employment,” and rules that apply in other special situations. Section 1.415(a)-1 generally retains the rules set forth in the proposed regulations.

The proposed regulations eliminated the rule under the 1981 regulations under which a multiemployer plan could satisfy the limitations of section 415 separately with respect to benefits or contributions from each employer. Thus, the proposed regulations required the benefits or annual additions with respect to a participant under a multiemployer plan to satisfy the limitations of section 415 on an aggregate basis. Some commentators asked that the rule from the 1981 regulations be retained. The IRS and the Treasury Department have determined that there is no statutory basis for permitting disaggregation of a multiemployer plan for this purpose. Furthermore, statutory changes made since the issuance of the 1981 regulations have made this permissive disaggregation rule from the 1981 regulations less needed and more conducive to significant abuses. In EGTRRA (and as made permanent in PPA '06), multiemployer plans were exempted from the limitation for defined benefit plans based on high-3 average compensation. This change eliminated the need for multiemployer plans to obtain compensation information with respect to each participant from multiple participating employers. In TRA '86, the phase-in period for the dollar limitation for defined benefit plans was changed from 10 years of service to 10 years of plan participation. As a result of this change, the permissive disaggregation rule from the 1981 regulations allows for the multiplication of section 415 limits within a multiemployer plan that could not be otherwise achieved by simply establishing separate single employer plans. Accordingly, these final regulations retain the rule from the proposed regulations that does not allow disaggregation of a multiemployer plan. In this regard, see the discussion under the paragraph heading “§ 1.415(c)-2: Definition of Compensation” for a rule that treats all employers contributing to a multiemployer plan as a single employer for purposes of the restriction on the recognition of compensation paid after severance from employment with an employer.

<sup>1</sup> The proposed regulations also contained corresponding changes to regulations under section 403(b) with respect to amounts payable following severance from employment. These changes will be incorporated into regulations under section 403(b) when those regulations are finalized.

Section 1.415(a)–1(d)(3)(v) provides rules regarding a plan's incorporation by reference of cost-of-living increases in the applicable limitations pursuant to section 415(d), including default rules that apply in the absence of contrary plan provisions. In providing rules for incorporation by reference, the proposed regulations provided that annual increases in the applicable limitations pursuant to section 415(d) do not apply in limitation years beginning after the annuity starting date to a participant who has previously commenced receiving benefits unless the plan specifies that this annual increase applies to such a participant.

One commentator pointed out that this provision in the proposed regulations modified the default treatment under the 1981 regulations (which provide that adjustments to the applicable limitations are not made after a participant's separation from service unless the plan so provides). In response to this comment, the final regulations retain the rule from the 1981 regulations under which the section 415(d) annual increases in the applicable limitations do not apply with respect to a participant for increases that become effective after the participant's severance from employment with the employer maintaining the plan (or, if earlier, after the annuity starting date in the case of a participant who has commenced receiving benefits) unless the plan specifies that this annual increase applies to such a participant. Thus, annual increases in the applicable limitations apply to a participant who has severed from employment with the employer maintaining the plan or who has commenced receiving benefits only if the plan specifies that those annual increases apply to such a participant.

#### Limitations Applicable to Defined Benefit Plans (§ 1.415(b)–1)

Section 1.415(b)–1 of these regulations sets forth rules for applying the limitations on benefits under a defined benefit plan. Under these limitations, the annual benefit must not exceed the lesser of \$160,000 (as adjusted pursuant to section 415(d)) and 100 percent of the participant's average compensation for the period of the participant's high-3 years of service. These regulations generally define the period of a participant's high-3 years of service as the period of 3 consecutive calendar years during which the employee had the greatest aggregate compensation from the employer. A retirement benefit payable in a form other than a straight life annuity is adjusted to an actuarially equivalent straight life annuity to determine the

annual benefit payable under that form of distribution. In addition, the \$160,000 dollar limitation under section 415(b)(1)(A) is actuarially adjusted for benefit payments that commence before age 62 or after age 65. Section 1.415(b)–1 generally retains the rules set forth in the proposed regulations except as indicated below.

The proposed regulations provided that, in addition to applying to benefits payable to participants and beneficiaries, the limitations of section 415(b) apply to accrued benefits (regardless of whether the benefit is vested) and benefits payable from an annuity contract distributed to a participant. Some commentators argued that it is inappropriate to apply the limitations of section 415(b) to a participant's accrued benefit in the case of a plan that is not subject to the requirements of section 411, since such a plan sometimes does not define an accrued benefit and benefits under such a plan can always be reduced if needed so that payments under the plan will satisfy the limitations of section 415. In response, these regulations provide that the rule applying section 415(b) to limit a participant's accrued benefit applies only to a plan that is subject to the requirements of section 411. However, a plan that is not subject to the requirements of section 411 is still subject to the requirements of section 415(b) with respect to the annual benefit payable to a participant at any time under the plan. As indicated in the preamble to the proposed regulations, where a participant's accrued benefit is computed pursuant to the fractional rule of section 411(b)(1)(C), the limitations of section 415(b) apply to the accrued benefit as of the end of the limitation year and, for ages prior to normal retirement age, are not required to be applied to the projected annual benefit commencing at normal retirement age from which the accrued benefit is computed.

#### A. Actuarial Assumptions Used to Convert Benefits to a Straight Life Annuity

Pursuant to section 415(b)(2)(B) (which provides for benefits paid in a form other than a straight life annuity to be adjusted to an actuarially equivalent straight life annuity in accordance with Treasury regulations), these regulations provide rules under which a retirement benefit payable in any form other than a straight life annuity is converted to the straight life annuity that is actuarially equivalent to that other form to determine the annual benefit (which is used to demonstrate compliance with section 415) with respect to that form of

distribution. These rules reflect statutory changes that specify the actuarial assumptions that are to be used for these equivalency calculations as well as published guidance that has been issued since the prior final regulations were published in 1981. The statutory changes reflected in these rules include, for plan years beginning in years 2004 and 2005, the use of a 5.5 percent interest rate for benefits that are subject to the present value rules of section 417(e)(3),<sup>2</sup> as set forth in PFEA, as well as the modifications under section 303 of PPA '06 to the equivalency calculations for benefits that are subject to the present value rules of section 417(e)(3) (which are applicable to distributions with annuity starting dates in plan years beginning after December 31, 2005). In addition to setting forth rules for adjusting forms of benefit other than straight life annuities, these regulations permit the IRS to issue published guidance setting forth simplified methods for making these adjustments.

Under these regulations, the annual benefit is determined as the greater of the actuarially equivalent straight life annuity determined under the plan's actuarial assumptions or the actuarially equivalent straight life annuity determined under actuarial assumptions specified by statute. This methodology implements the policy reflected in section 415(b)(2)(E), under which the plan's determination that a straight life annuity and a particular optional form of benefit are actuarially equivalent is overridden only when the optional form of benefit under the plan is more valuable than the corresponding straight life annuity when the two forms are compared using the statutorily specified actuarial assumptions.

The rules in these regulations under which a retirement benefit payable in any form other than a straight life annuity is converted to a straight life annuity to determine the annual benefit with respect to that form of distribution generally follow the rules set forth in Rev. Rul. 98–1. However, the calculation of the actuarially equivalent straight life annuity determined using the plan's assumptions for actuarial equivalence has been simplified for a

<sup>2</sup> Section 417(e)(3) provides minimum present value requirements for certain forms of benefit payable from a defined benefit plan under which payments cannot be less than the amount calculated using a specified interest rate and a specified mortality table. For forms of benefit that are subject to the minimum present value rules of section 417(e)(3), the limitations of section 415(b) apply to limit the amount of a distribution even if those limitations result in a lower distribution than would otherwise be required under the rules of section 417(e)(3). See § 1.417(e)–1(d)(1).

form of benefit that is not subject to the minimum present value rules of section 417(e)(3). Under the simplified calculation, instead of first determining the actuarial assumptions used under the plan and then applying those assumptions to convert an optional form of benefit to an actuarially equivalent straight life annuity, the regulations use the straight life annuity, if any, that is payable at the same age under the plan. This straight life annuity is then compared to the straight life annuity that is the actuarial equivalent of the optional form of benefit (determined using the standardized assumptions), and the larger of the two straight life annuities is used for purposes of demonstrating compliance with section 415.

This simplification has not been extended to forms of benefit that are subject to the minimum present value rules of section 417(e)(3), however, because under a plan those forms of benefit are often determined as the actuarial equivalent of the deferred annuity, rather than as the actuarial equivalent of the immediate straight life annuity. Instead, for a benefit paid in a form to which section 417(e)(3) applies, pursuant to section 415(b)(2)(E), the actuarially equivalent straight life annuity benefit generally is determined as the greatest of three annual amounts. The first is the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial equivalence. The second is the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption and the applicable mortality table for the distribution under § 1.417(e)-1(d)(2). The third is the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under § 1.417(e)-1(d)(3) and the applicable mortality table for the distribution under § 1.417(e)-1(d)(2)), divided by 1.05. This rule reflects the amendment of section 415(b)(2)(E) by section 303 of PPA '06.

One commentator asked whether the rules regarding adjustments for forms of benefit that are subject to the minimum present value standards of section 417(e)(3) apply to plans that are not subject to the requirements of section

417. Section 415(b)(2)(E) applies based on the form of the benefit, and not the status of the plan, and therefore the final regulations provide that these rules also apply to plans that are not subject to the requirements of section 417.

Some commentators expressed concern that the examples illustrating the rules for actuarial adjustments converted optional forms of benefit into straight life annuities payable monthly, and they noted that had the conversion been to a straight life annuity payable on the first day of each year, the straight life annuity would have been smaller and therefore a greater benefit would have been permissible under section 415(b). Under section 415(b)(2)(B), the Secretary is delegated authority to prescribe regulations for adjusting a benefit so that it is equivalent to a benefit payable annually in the form of a straight life annuity. These regulations provide that if a benefit is payable in the form of a straight life annuity, no adjustment is made to account for differences in the timing of payments during a year (for example, no adjustment is made on account of the annuity being payable in annual or monthly installments). Thus, if the section 415(b) dollar limit for a limitation year is \$180,000, a plan is not permitted to provide for 12 monthly payments of \$15,583, which is actuarially equivalent to an annual benefit of \$180,000 payable on the first day of the year. With respect to a benefit payable in a form other than a straight life annuity, the annual benefit is determined as the straight life annuity payable on the first day of each month that is actuarially equivalent to the benefit payable in such other form.

Some commentators expressed concerns regarding the application of these actuarial adjustments in the case of annuity forms of benefit that are increased automatically each year pursuant to plan terms. Commentators argued that, in testing such a form of benefit for compliance with section 415, increases to the section 415(b) limits pursuant to section 415(d) should be taken into account. Thus, commentators asserted that a form of benefit with an automatic increase feature should satisfy section 415(b) so long as payments made pursuant to the benefit during each limitation year are less than the section 415(b) limit in effect for the limitation year.

In response to these comments, these final regulations provide that, for a form of benefit that is not subject to the requirements of section 417(e)(3), no adjustments are made to reflect these automatic increases if certain requirements are satisfied. Specifically,

the form of benefit without regard to the automatic increase feature must satisfy the requirements of section 415(b), and the plan must provide that in no event will the amount payable to a participant under the form of benefit in any limitation year be greater than the section 415(b) limit applicable at the annuity starting date, as increased in subsequent years pursuant to section 415(d). If these requirements are not satisfied, the annual benefit with respect to a benefit that is subject to automatic increases must reflect the value of these automatic increases under the rules described above.

#### *B. Inclusion of Social Security Supplements in Annual Benefit*

As under the proposed regulations, these regulations clarify that a social security supplement is included in determining the annual benefit. Under section 415(b)(2)(B), the annual benefit does not include ancillary benefits that are not directly related to retirement benefits. However, because a social security supplement is payable upon retirement as a form of retirement income, it is a retirement benefit. Thus, a social security supplement is included in determining the annual benefit without regard to whether it is an ancillary benefit or a qualified social security supplement (QSUPP) within the meaning of § 1.401(a)(4)-12.

#### *C. Determination of High-3 Average Compensation*

The proposed regulations contained two new provisions that would have had a significant effect on the determination of a participant's average compensation for the participant's high-3 consecutive years. The first provision changed a rule in the 1981 final regulations by restricting the compensation used for this purpose to compensation earned in periods during which the participant was an active participant in the plan. Pursuant to the amendment of section 415(b)(3) made by section 832 of PPA '06 (which eliminated the active participation requirement for purposes of determining average compensation for years beginning after December 31, 2005), this change has not been incorporated into the final regulations.

The second provision in the proposed regulations clarified the interaction of the requirements of section 401(a)(17) and the definition of compensation that must be used for purposes of determining a participant's average compensation for the participant's high-3 consecutive years. Because a plan is not permitted to base benefits on compensation in excess of the limitation

under section 401(a)(17), a plan's definition of compensation used for purposes of applying the limitations of section 415 is not permitted to reflect compensation in excess of the limitation under section 401(a)(17). Thus, for example, where a participant commences receiving benefits in 2006 at age 75 (so that the age-adjusted dollar limitation could be as high as \$390,953, depending on plan provisions), and the participant had compensation in excess of the applicable section 401(a)(17) limit for years 2003, 2004, and 2005, the participant's benefit under the plan is limited by the average compensation for his highest three years as limited by section 401(a)(17), which is \$205,000 (the average of \$200,000, \$205,000, and \$210,000).

Commentators objected to this second provision. These regulations retain this provision from the proposed regulations because the IRS and the Treasury Department believe that this interpretation is based on the best reading of applicable statutory requirements. However, these regulations include a grandfather provision under which a defined benefit plan is considered to satisfy the limitations of section 415(b) for a participant with respect to benefits accrued or payable under the plan as of the end of the limitation year that is immediately prior to the effective date of these final regulations for the plan pursuant to plan provisions (including plan provisions relating to the plan's limitation year) that were both adopted and in effect before April 5, 2007, but only if such plan provisions meet the requirements of statutory provisions, regulations, and other published guidance relating to section 415 in effect immediately before the effective date of these final regulations. In determining whether plan provisions meet the requirements of statutory provisions, regulations, and other published guidance relating to section 415 in effect immediately before the effective date of these final regulations, plan provisions are permitted to reflect compensation in excess of the section 401(a)(17) limit, and the benefits based on such compensation are eligible for the grandfather rules.

These regulations set forth rules for computing the limitation of section 415(b)(1)(B) of 100 percent of the participant's average compensation for the period of the participant's high-3 years of service for a participant who is employed with the employer for less than 3 consecutive calendar years. For such a participant, the period of the participant's high-3 years of service is the actual number of consecutive years

of service (including fractions of years, but not less than one year). In such a case, the limitation of section 415(b)(1)(B) of 100 percent of the participant's average compensation for the period of the participant's high-3 years of service is computed by averaging the participant's compensation during the participant's longest consecutive period of service over the actual period of service (including fractions of years, but not less than one year). In a change from the proposed regulations, these regulations provide that, in the case of a participant who has had a severance from employment with the employer maintaining the plan and who is subsequently rehired by that employer, the period of the participant's high-3 years of service is calculated by excluding any years for which the participant performs no services for and receives no compensation from the employer maintaining the plan (the break period), and by treating the year of service immediately prior to and the year of service immediately after the break period as if the years were consecutive.

These regulations also modify the proposed regulations by providing a rule that applies in the case of an employee who is rehired after severing employment. If the plan provides for the adjustment of a participant's compensation limit in accordance with section 415(d) for limitation years following the limitation year in which the employee severs employment, the rehired employee's compensation limit under section 415(b) is the greater of 100 percent of the participant's average compensation for the period of the participant's high-3 years of service, as determined prior to the employee's severance from employment and as adjusted pursuant to section 415(d), or 100 percent of the participant's average compensation for the period of the participant's high-3 years of service, taking into account service both before and after rehire. This rule was added because a participant's compensation limit should not be lower than it would otherwise be merely because the participant is rehired.

#### *D. Treatment of Benefits Paid Partially in the Form of a QJSA*

Under section 415(b)(2)(B), the survivor annuity portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity (QJSA), as defined in section 417(b), is not taken into account in determining the annual benefit for purposes of applying the limitations of section 415(b). As under the proposed

regulations, these regulations clarify how this exception from the limitations of section 415 for the survivor annuity portion of a QJSA applies to benefits paid partially in the form of a QJSA and partially in some other form. Under this clarification, the rule excluding the survivor portion of a QJSA from the annual benefit applies to the survivor annuity payments under the portion of a benefit that is paid in the form of a QJSA, even if another portion of the benefit is paid in some other form.

#### *E. Dollar Limitation Applicable to Early or Late Commencement*

The determination of the age-adjusted dollar limitation under these regulations reflects the rules enacted in EGTRRA. As provided in Q&A-3 of Rev. Rul. 2001-51, this determination generally follows the same steps and procedures as those used in Rev. Rul. 98-1, except that such determination takes into account the increased defined benefit dollar limitation enacted by EGTRRA and the adjustments for early or late commencement are no longer based on social security retirement age. Applying rules that are similar to those that are used for determining actuarial equivalence among forms of benefits, these regulations generally use the plan's determinations for actuarial equivalence of early or late retirement benefits, but override those determinations where the use of the specified statutory assumptions results in a lower limit. This methodology is retained from the proposed regulations because the IRS and the Treasury Department believe that generally a plan's actuarial equivalence for section 415 purposes should be the same as actuarial equivalence for other purposes and because of the need to have an administrable rule when a plan uses factors that are not explicitly based on an interest rate and mortality table.

Some commentators expressed concern that these rules effectively result in no increase to the dollar limitation where a plan that is not subject to the requirements of section 411 does not increase the participant's benefit to reflect a delay in commencement beyond age 65. No change has been made to address this concern because the IRS and the Treasury Department believe it is not appropriate to increase the dollar limitation for commencement after age 65 where, under the plan terms, there is no increase to the participant's benefit on account of delayed commencement (so that any increase in a participant's benefit is solely on account of additional service or compensation). In response to other commentator

concerns, these regulations provide that an actuarial increase to a participant's benefit for commencement after age 65 is taken into account for this purpose even if the actuarial increase offsets additional benefit accruals under the plan.

These regulations adopt rules for mortality adjustments used in computing the dollar limitation on a participant's annual benefit for distributions commencing before age 62 or after age 65 that are generally consistent with Notice 83-10 and Notice 87-21. Under these rules, to the extent that a forfeiture does not occur upon the participant's death before the annuity starting date, generally no adjustment is made to reflect the probability of the participant's death during the relevant time period (which is the period before age 62 or after age 65), and to the extent a forfeiture occurs upon the participant's death before the annuity starting date, an adjustment must be applied to reflect the probability of the participant's death during the relevant time period.

These regulations also provide a simplified method for applying these mortality adjustment rules. Under this simplified method, a plan is permitted to treat no forfeiture as occurring upon a participant's death if the plan does not charge participants for providing a qualified preretirement survivor annuity, but only if the plan applies this treatment for adjustments that apply both before age 62 and after age 65. This simplified method eliminates the need to determine the extent of a forfeiture upon death in the case where a plan provides for a qualified preretirement survivor annuity.

One commentator asked whether, for purposes of adjusting the dollar limit for commencement prior to age 62, a plan is permitted to make a mortality adjustment for ages below age 62, even if the plan does not provide for a forfeiture upon the participant's death before the annuity starting date where it is before age 62. Recognizing that mortality adjustments would result in a lower limit in such a case, these regulations permit such an adjustment to be made if the plan so provides.

Some commentators expressed concern that the application of the rules that adjust the section 415(b)(1)(A) dollar limit for pre-age 62 benefit commencement as set forth in the proposed regulations could result in the limit decreasing as a participant ages under certain circumstances. To address this concern, these regulations provide that, notwithstanding the generally applicable rules for age adjustments to the dollar limitation, the age-adjusted

section 415(b)(1)(A) dollar limit does not decrease on account of an increase in age or the performance of additional service.

*F. Nonapplication of Adjustment to Dollar Limitation for Early Commencement With Respect to Police Department and Fire Department Employees*

Consistent with section 415(b)(2)(G) and (H), as amended by section 906(b) of PPA '06, these regulations provide that the early retirement reduction does not apply to certain participants in plans of state, Indian tribal government, and local government units who are employees of a police department or fire department, or former members of the Armed Forces of the United States. This rule applies to any participant in a plan maintained by a state, Indian tribal government, or political subdivision thereof who is credited, for benefit accrual purposes, with at least 15 years of service as either (1) a full-time employee of any police department or fire department of the state, Indian tribal government, or political subdivision that provides police protection, firefighting services, or emergency medical services, or (2) a member of the Armed Forces of the United States. These regulations clarify that the application of this rule depends on whether the employer is a police department or fire department of the state, Indian tribal government, or political subdivision, rather than on the job classification of the individual participant. Also, this rule applies based on the function of an organization rather than based on the name of the organization.

*G. Application of \$10,000 Exception*

Pursuant to section 415(b)(4), the benefits payable with respect to a participant under a defined benefit plan satisfy the limitations of section 415(b) if the retirement benefits payable with respect to such a participant under the plan and all other defined benefit plans of the employer do not exceed \$10,000 for the plan year or for any prior plan year, and the employer has not at any time maintained a defined contribution plan in which the participant participated. As under the proposed regulations, these regulations clarify that the alternative \$10,000 limitation under section 415(b)(4) is applied to actual distributions made during each year. Thus, a distribution for a limitation year that exceeds \$10,000 is not within the section 415(b)(4) alternative limitation (and therefore will not be excepted from the otherwise applicable limits of section 415(b)), even

if the distribution is a single-sum distribution that is the actuarial equivalent of an accrued benefit with annual payments that are less than \$10,000.

*H. Exclusion of Annual Benefit Attributable to Mandatory Employee Contributions From Annual Benefit*

These regulations retain the rules from the 1981 regulations that the annual benefit does not include the annual benefit attributable to mandatory employee contributions. For this purpose, the term *mandatory employee contributions* means amounts contributed to the plan by the employee that are required as a condition of employment, as a condition of participation in the plan, or as a condition of obtaining benefits (or additional benefits) under the plan attributable to employer contributions. See section 411(c)(2)(C). Employee contributions to a defined benefit plan that are not maintained in a separate account as described in section 414(k) constitute mandatory employee contributions (even if an employee can elect whether to make the contributions, and even if section 411 does not apply to the plan) because, depending upon the investment performance of plan assets, employer contributions may be needed to pay the portion of the participant's benefit that is conditioned upon these employee contributions. Any other employee contributions (plus earnings thereon) are treated as a separate defined contribution plan rather than as part of a defined benefit plan.

These regulations retain the rule from the 1981 regulations that the annual benefit attributable to mandatory employee contributions is determined under the rules of section 411(c) and regulations promulgated under section 411, regardless of whether section 411 applies to the plan. These regulations also clarify that the following are not treated as employee contributions: (1) Contributions that are picked up by a governmental employer as provided under section 414(h)(2), (2) repayment of any loan made to a participant from the plan, and (3) repayment of any amount that was previously distributed. One commentator asked how to determine the annual benefit attributable to mandatory employee contributions under section 411(c) in the case of a plan that is not subject to the requirements of section 411 and 417, and suggested the use of the plan's factors for this purpose. This suggestion was not incorporated into these final regulations because the amount payable with respect to employee contributions

that is in excess of the amount that would be payable with respect to such contributions using the rules of section 411(c) is effectively a subsidy that should be included in determining the participant's annual benefit under the plan. These regulations also provide that, for purposes of determining the accumulated contributions described in section 411(c)(2)(C), where the plan is not subject to the requirements of section 411, the plan must determine what would have been the applicable effective date of section 411(a)(2) as if section 411 applied to the plan, and in determining the annual benefit that is actuarially equivalent to these accumulated contributions, the plan must determine the interest rate that would have been required under section 417(e)(3) as if section 417 applied to the plan.

Another commentator asked why the repayment of an employee contribution is not treated as an employee contribution under this rule. No change to the regulations has been made to reflect this concern because, while the repayment is not treated as an employee contribution for purposes of section 415, the original employee contribution is still considered an employee contribution for this purpose.

#### *I. Exclusion of Annual Benefit Attributable to Rollover Contributions From Annual Benefit*

These regulations clarify that the annual benefit does not include the annual benefit attributable to rollover contributions made to a defined benefit plan (that is, rollover contributions that are not maintained in a separate account that is treated as a separate defined contribution plan under section 414(k)). In such a case, the annual benefit attributable to rollover contributions is determined by applying the rules of section 411(c) and treating the rollover contributions as employee contributions (regardless of whether sections 411 and 417 apply to the plan). This will occur, for example, if a distribution is rolled over from a defined contribution plan to a defined benefit plan to provide an annuity distribution. Thus, in the case of rollover contributions from a defined contribution plan to a defined benefit plan to provide an annuity distribution, the annual benefit attributable to those rollover contributions for purposes of section 415 is determined by applying the rules of section 411(c), regardless of the assumptions used to compute the annuity distribution under the plan. Accordingly, in such a case, if the plan credits higher interest or uses more favorable factors than those specified in section 411(c) to determine the amount

of annuity payments arising from a rollover contribution, the annual benefit under the plan reflects the excess of those annuity payments over the amounts that would be payable using the rules of section 411(c) because such excess is effectively a subsidy which is included in determining the participant's annual benefit under the plan.

These final regulations clarify that the rule that excludes the annual benefit attributable to rollover contributions applies to rollover contributions from an eligible retirement plan, as defined in section 402(c)(8)(B). Thus, the rule applicable to rollovers is not limited solely to rollovers from qualified plans.

Rollover contributions to an account that is treated as a separate defined contribution plan under section 414(k) do not give rise to an annual benefit because the separate account is not treated as a defined benefit plan under section 415(b). Furthermore, under the rules relating to defined contribution plans, these rollover contributions to a separate account are excluded from the definition of annual additions to a defined contribution plan.

#### *J. Treatment of Benefits Transferred Among Plans and Terminated Plans*

These regulations generally retain the provisions in the proposed regulations that modify the rules of the 1981 final regulations for determining the amount of transferred benefits that are excluded from the annual benefit under a defined benefit plan in the event of a transfer from another defined benefit plan. These modifications to the 1981 final regulations are designed to ensure that transferred benefits are not counted more than once when the transferor plan and the transferee plan are aggregated under section 415(f) and § 1.415(f)-1, and to prevent the circumvention of the limitations of section 415(b) through benefit transfers to plans of unrelated employers. The rules of section 415(b) that apply upon a transfer of benefits between plans operate independently from the requirements of section 414(l), and compliance with the requirements of section 414(l) does not ensure compliance with these rules.

The proposed regulations provided that, if the transferee plan's benefits are required to be taken into account pursuant to section 415(f) and § 1.415(f)-1 in determining whether the transferor plan satisfies the limitations of section 415(b) for that limitation year, then the transferred benefits are disregarded in determining the annual benefit under the transferor plan. The final regulations modify this rule. This

modification is being made in conjunction with modifications to the proposed regulations with respect to the aggregation of plans among formerly affiliated employers (discussed in more detail under the heading “§ 1.415(f)-1: Aggregating plans”). Generally, under the modified section 415(f) aggregation rules, there are situations in which only a portion of the benefits provided under plans maintained by formerly affiliated employers is taken into account when applying section 415 on an aggregated basis to each employer. Given this modification to the aggregation rules, the determination of whether transferred benefits are nonetheless treated as provided by the transferor plan is properly based on whether the transferred benefits are included in the portion of the transferee plan that is aggregated with the transferor plan. Thus, the final regulations provide that, to the extent the benefits transferred to a transferee plan are otherwise required to be taken into account pursuant to section 415(f) and § 1.415(f)-1 in determining whether the transferor plan satisfies the limitations of section 415(b), the transferred benefits are not also treated as being provided under the transferor plan (because these benefits will be taken into account by the transferor plan when it is aggregated with the transferee plan).

The proposed regulations provided that where there has been a transfer of liabilities between plans and the transferee plan's benefits are not required to be taken into account pursuant to section 415(f) and § 1.415(f)-1 in determining whether the transferor plan satisfies the limitations of section 415(b), the assets associated with those transferred liabilities (other than surplus assets) are treated by the transferor plan as distributed as a single-sum distribution. These final regulations modify this proposed transfer rule in two respects. First, for the reasons described in the paragraph above, this transfer rule is applicable only if the benefits transferred to the transferee plan are not otherwise required to be taken into account by the transferor plan pursuant to section 415(f) and § 1.415(f)-1. Second, the final regulations modify this proposed rule in response to comments expressing concern with the administrative complexity associated with the calculation of the deemed single-sum distribution. Instead of treating the assets associated with the transferred liabilities as a deemed single-sum distribution, the final regulations treat the transferred liabilities as comprising a plan that must be aggregated with the

transferor plan, that had terminated with sufficient assets to pay benefit liabilities under the plan and had purchased annuities to provide plan benefits.

Although such a transfer is treated as a plan termination in computing the annual benefit under the transferor plan, no corresponding adjustment to the annual benefit under the transferee plan is made to reflect the fact that some of the benefits provided under the transferee plan are attributable to the transfer. Thus, the actual benefit provided under the transferee plan is used to determine the annual benefit under the transferee plan even though the transferred amount is also included along with other benefits provided under the transferor plan in determining the participant's annual benefit under the transferor plan.

While some commentators expressed concern that this resulted in double counting of benefits, in most such cases, a participant whose benefits have been transferred would accrue no additional benefit under the transferor plan that would be required to be tested under the transferor plan (in combination with the transferred benefits). Furthermore, these rules prevent the transferor plan from avoiding the limitations of section 415 for participants by spinning off the participants' benefits to a plan of an unrelated employer and then accruing additional benefits for the participants. For example, without these rules, the benefit of an executive in a plan maintained by the executive's employer could be transferred to a plan maintained by a business that is owned by the executive and that is not aggregated with the executive's employer for purposes of section 415, and the executive could accrue an additional benefit up to the section 415 limits under the plan maintained by the executive's employer.

The final regulations provide rules specifying how to take into account benefits provided under a terminated plan. If a defined benefit plan is terminated with sufficient assets to pay accrued benefits and a participant in the plan has not yet commenced benefits under the plan, for purposes of satisfying section 415(b) with respect to the participant, the final regulations require that all other defined benefit plans maintained by the employer that maintained the terminated plan take into account the benefits provided pursuant to the annuities purchased to provide benefits under the terminated plan at each possible annuity starting date. The final regulations provide that if a defined benefit plan is terminated and there are not sufficient assets for the

payment of the accrued benefit of all plan participants, all other defined benefit plans maintained by the employer that maintained the terminated plan are required to take into account the benefits that are actually provided under the terminated plan. For example, if the terminated plan is subject to Title IV of ERISA, the other plans maintained by the employer that maintained the terminated plan take into account the benefits that are provided by the Pension Benefit Guaranty Corporation. If the terminated plan was not subject to Title IV of ERISA, the other plans take into account the benefits that are actually paid by the terminated plan. The multiple annuity starting date rules apply to the extent that benefits from a terminated plan and an ongoing plan do not commence at the same time.

These regulations clarify that if a participant elects to transfer a distributable benefit to a defined benefit plan pursuant to § 1.411(d)-4, A-3(c), the transfer is treated in the same manner as an amount that is distributed and then rolled over (specifically, the transferred benefit is treated by the transferor plan as a distribution, and the annual benefit provided by the transferee plan does not include the annual benefit attributable to the amount transferred). This rule applies regardless of whether the requirements of section 411 apply to the plan and, in the case of a transfer from a defined contribution plan that is not subject to the requirements of section 411 (such as a governmental plan) to a defined benefit plan, the rule applies even if the participant's benefits are not distributable from the defined contribution at the time of the transfer.

#### *K. 10-Year Phase-in of Limitations Based on Years of Participation and Years of Service*

As under the proposed regulations, these regulations provide rules for applying the 10-year phase-in of the dollar limitation based on years of participation in the plan, as added by TRA '86, and modify the rules set forth in the 1981 regulations for applying the 10-year phase-in of the compensation limit based on years of service. These regulations, like the proposed regulations, follow the guidance set forth in Notice 87-21 for applying the 10-year phase-in based on years of participation, and apply analogous rules for purposes of applying the 10-year phase-in based on years of service.

#### *L. Exception to Compensation-Based Limit for Certain Church Plans*

The final regulations also reflect the amendment of section 415(b)(11) by PPA '06. Under the amendment, the section 415(b)(1)(B) compensation-based limit that is generally applicable to defined benefit plans is not applicable to a participant in a plan maintained by a church described in section 3121(w)(3)(A) if the participant has never been a highly compensated employee (as defined in section 414(q)) of the church. These regulations provide that if such a participant later becomes a highly compensated employee of the church, the plan is not treated as failing to satisfy the compensation-based limit provided that no plan amendments increasing the participant's benefits are adopted in the year the participant becomes a highly compensated employee and there is no increase in the participant's accrued benefit derived from employer contributions in subsequent years.

#### *Multiple Annuity Starting Dates (§ 1.415(b)-2)*

Section 1.415(b)-2 of the proposed regulations set forth rules for computing the annual benefit under one or more defined benefit plans in the case of multiple annuity starting dates. Multiple annuity starting dates exist, for example, where benefit distributions to a participant have previously commenced under a plan that is aggregated for purposes of section 415 with a plan for which the participant receives current accruals. In addition, the multiple annuity starting date rules apply for purposes of determining the annual benefit of a participant where a new distribution election is effective during the current limitation year with respect to a distribution that previously commenced. The multiple annuity starting date rules also apply when benefit payments are increased, unless the benefit increase complies with one of the safe harbors provided in the regulations.

Numerous commentators raised concerns regarding these rules. Based on these comments, the IRS and the Treasury Department have determined that revisions to these rules are needed before these rules are adopted in final form. Accordingly, these regulations reserve a place for regulations regarding multiple annuity starting dates. The IRS and the Treasury Department are developing new proposed regulations regarding multiple annuity starting dates, and corresponding revisions to regulations under § 1.401(a)(9)-6.

In the interim, § 1.415(b)-1 of these regulations provides that if a participant has or will have distributions commencing at more than one annuity starting date, the limitations of section 415 must be satisfied as of each of the annuity starting dates, taking into account the benefits that have been or will be provided at all of the annuity starting dates. In determining the annual benefit of a participant as of a particular annuity starting date, the plan is required to actuarially adjust past and future distributions with respect to the benefit that commenced at the other annuity starting dates.

#### Limitations Applicable to Defined Contribution Plans § 1.415(c)-1

Section 1.415(c)-1 of these regulations sets forth rules that apply to limitations on annual additions under a defined contribution plan. Under these limitations, annual additions must not be greater than the lesser of \$40,000 (as adjusted pursuant to section 415(d)) or 100 percent of the participant's compensation for the limitation year. The term *annual additions* generally means the sum for any year of employer contributions, employee contributions, and forfeitures. In addition to applying to qualified defined contribution plans, the limitations in section 415(c) and § 1.415(c)-1 of the regulations apply to section 403(b) annuity contracts, simplified employee pensions described in section 408(k), mandatory employee contributions to qualified defined benefit plans, and contributions to certain medical benefit accounts.

These regulations reflect a number of statutory changes to section 415(c) that were made after the issuance of the 1981 regulations. Among these changes are the revised limitation amounts under section 415(c), the revised rules applicable to employee stock ownership plans, and the rules applying the limitations of section 415(c) to certain medical benefit accounts. These regulations also make some other changes to the 1981 regulations, as discussed below. Consistent with the change to section 403(b)(1) made in JCWAA, these regulations provide that the limitations under section 415(c) apply to any section 403(b) annuity contract, regardless of whether the contract satisfies the requirements of section 414(i) to be a defined contribution plan. Thus, the limitations under section 415(c) apply to a section 403(b) annuity contract even if the limitations of section 415(b) also apply to the contract. Section 415(b) applies to the contract if the contract is a church plan that is covered by the grandfather rule of section 251(e)(5) of TEFRA.

Consistent with Rev. Rul. 2002-45, the regulations provide that a restorative payment that is allocated to a participant's account does not give rise to an annual addition for any limitation year. For this purpose, restorative payments are payments made to restore losses to a plan resulting from actions by a fiduciary for which there is a reasonable risk of liability for breach of a fiduciary duty under Title I of ERISA, where plan participants who are similarly situated are treated similarly with respect to the payments. Commentators suggested that restorative payments should also include payments made to restore losses to a plan resulting from actions by a fiduciary for which there is a reasonable risk of liability for breach of a fiduciary duty under other applicable federal or state law, to take into account contributions under plans that are not subject to Title I of ERISA in appropriate circumstances. These regulations adopt this suggestion. Accordingly, payments to a defined contribution plan are restorative payments only if the payments are made in order to restore some or all of the plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty under Title I of ERISA or under other applicable federal or state law. The regulations specifically list certain payments that satisfy this rule, including payments to a plan made pursuant to a Department of Labor order or court-approved settlement to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty, and payments made pursuant to the Department of Labor's Voluntary Fiduciary Correction Program to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty.

As under the proposed regulations, these final regulations provide that the Commissioner may in appropriate cases, considering all of the facts and circumstances, treat transactions between the plan and the employer, transactions between the plan and the employee, or certain allocations to participants' accounts as giving rise to annual additions. For example, in general, the Commissioner will treat payments made to a plan by an employer or another party to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty under Title I of ERISA or other Federal or state law generally as contributions that give rise to annual additions. As under the proposed

regulations, these regulations clarify that where an employee or employer transfers assets to a plan in exchange for consideration that is less than the fair market value of the assets transferred to the plan, there is an annual addition in the amount of the difference between the value of the assets transferred and the consideration.

For taxable employers, these regulations retain the rule under the 1981 regulations that an employer contribution is not treated as credited to a participant's account for a particular limitation year unless the contribution is actually made to the plan no later than 30 days after the end of the period described in section 404(a)(6) applicable to the taxable year with or within which the particular limitation year ends. The final regulations modify the corresponding rule for tax-exempt employers in the proposed regulations. Under the final regulations, a contribution to a plan by a tax-exempt employer is taken into account for a limitation year for purposes of section 415(c) if the contribution is credited to a participant's account no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the employer keeps its books) with or within which the particular limitation year ends. This date corresponds to the due date for Form 5500, "Annual Return/Report of Employee Benefit Plan," (with extensions) in cases in which the calendar or fiscal year coincides with the plan year and generally corresponds to the date for taxable employers who request filing extensions. The extent to which elective contributions constitute plan assets for purposes of the prohibited transaction provisions of section 4975 and Title I of ERISA is determined in accordance with regulations and rulings issued by the Department of Labor. See 29 CFR 2510.3-102.

The final regulations clarify that if the allocation of an annual addition is dependent under the terms of the plan upon the satisfaction of a condition that has not been satisfied by the date as of which the annual addition is allocated, then the annual addition is considered allocated as of the date the condition is satisfied. This is a change from the proposed regulations, under which this rule only applied if the allocation was dependent upon participation in the plan as of a particular date. Additionally, the final regulations clarify that an annual addition that is made pursuant to a corrective amendment that complies with the requirements of § 1.401(a)(4)-11(g) is

credited to the account of a participant for a particular limitation year if it is allocated to the participant's account under the terms of the corrective amendment as of any date within that limitation year.

These regulations clarify the operation of the special increased limitation applicable to church plans under section 415(c)(7). Under this rule, notwithstanding the generally applicable limitations, annual additions for a section 403(b) annuity contract for a year with respect to an individual who is a church employee are treated as not exceeding the limitation of section 415(c) if such annual additions for the year are not in excess of \$10,000. However, the total amount of additions with respect to any participant that are permitted to be taken into account for purposes of this rule for all years may not exceed \$40,000. The regulations also reflect a special rule for church employees performing services outside the United States, as amended by GOZA. Under this special rule, for any individual who is a church employee performing any services for the church outside the United States during the limitation year, additions for a section 403(b) annuity contract for any year are not treated as exceeding the limitations of section 415(c) if those annual additions for the year do not exceed \$3,000 (but only if the individual's adjusted gross income does not exceed \$17,000). These regulations clarify that the \$40,000 cumulative total only applies to excesses over what would have been permitted to be contributed without regard to this special rule, and clarify the interaction between the generally applicable church employee rule and the rule for church employees performing services outside the United States.

As under the proposed regulations, these regulations do not include the correction methods for excess annual additions applicable under § 1.415-6(b)(6) of the 1981 regulations. Conforming changes have been made to § 1.401(a)-2(b), § 1.401(a)(9)-5, A-9(b)(1), and § 1.402(c)-2, A-4(a) to reflect this deletion.

Despite the deletion, the deleted correction methods are generally permitted under the Employee Plans Compliance Resolution System (EPCRS), Rev. Proc. 2006-27 (2006-22 IRB 945) (see § 601.601(d)(2)). In section 2.02(2) of Rev. Proc. 2006-27, comments were requested on whether the correction methods in former § 1.415-6(b)(6), including the maintenance of suspense accounts, should be retained as options under EPCRS. Pending the issuance of further guidance that takes

into account those comments, plans that are eligible for the Self-Correction Program under section 4 of Rev. Proc. 2006-27 may implement corrections using the methods in former § 1.415-6(b)(6), but only if the requirements of section 9 of Rev. Proc. 2006-27 are satisfied, and those corrections will also be taken into account for purposes of the Voluntary Correction and Audit Closing Agreement Programs under EPCRS.

These regulations generally retain the rules under the 1981 regulations providing that a contribution to reduce accumulated funding deficiencies or a contribution made pursuant to a funding waiver relates to the limitation year of the initial funding obligation. However, these regulations, like the proposed regulations, provide that any interest paid by the employer with respect to such a contribution that is in excess of a reasonable amount is taken into account as an annual addition for the limitation year when the contribution is made (in contrast to the 1981 regulations, which required interest in excess of a reasonable amount to be taken into account as an annual addition for the limitation year for which the contribution was originally required). Rev. Rul. 78-223 (1978-1 CB 125) (see § 601.601(d)(2)) provides a method for determining contributions required to amortize waived contributions under a defined contribution plan. The application of any of the methods described in Rev. Rul. 78-223 will result in reasonable interest payments for purposes of applying the rules of section 415 (provided that, if a fixed interest rate in excess of 5 percent is used to amortize waived contributions, the interest rate must be reasonable). Thus, for example, the actual yield method (under which the adjusted account balance is increased or decreased periodically at the actual rate of investment return experienced by the plan for such period) can be used for this purpose.

#### Definition of Compensation (§ 1.415(c)-2)

Section 1.415(c)-2 of these regulations defines the term "compensation," which is defined in section 415(c)(3) and used for purposes of applying the limitations of section 415 as well as for various other purposes specified under the Internal Revenue Code. These regulations reflect a number of statutory changes to section 415(c)(3) that were made after the issuance of the 1981 regulations. Among these changes are the inclusion in compensation of certain deemed amounts for disabled participants and

nontaxable elective amounts for deferrals under sections 401(k), 403(b), and 457, cafeteria plan elections under section 125, and qualified transportation fringe elections under section 132(f)(4). In addition to these changes, these regulations make some other changes to the 1981 regulations, as discussed in this preamble.

The proposed regulations provided specific guidelines regarding when amounts received following severance from employment are considered compensation for purposes of section 415. The proposed regulations provided that the following are types of post-severance payments that are not excluded from compensation because of timing if they are paid within 2½-months following severance from employment: (1) payments that, absent a severance from employment, would have been paid to the employee while the employee continued in employment with the employer and are regular compensation for services during the employee's regular working hours, compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation; and (2) payments for accrued bona fide sick, vacation, or other leave, but only if the employee would have been able to use the leave if employment had continued.

Commentators made a number of suggestions regarding the post-severance compensation rules. Some commentators requested a lengthening of the 2½-month period to as long as a year, or exceptions from the 2½-month rule under certain circumstances (such as teacher pay that is paid on a 12-month basis for each 9-month school year, or residual payments that are made to entertainment industry employees years after the services are performed). Some commentators requested changes to the types of compensation that are permitted or required to be taken into account for ease of plan administration.

The final regulations lengthen the time during which certain post-severance payments are taken into account from the 2½-month period under the proposed regulations. The final regulations provide that in order for payments after severance from employment to be treated as compensation within the meaning of section 415(c)(3), payments made for services provided to a former employer must be made by the later of 2½-months after the severance from employment or the end of the limitation year that includes the date of severance from employment. In addition, a governmental plan (within the meaning

of section 414(d) is permitted to provide that the calendar year that includes the date of severance from employment is substituted for the limitation year that includes the date of severance from employment for this purpose.

The final regulations also provide that post-severance payments of accrued bona fide sick, vacation, and other leave that are paid within the timeframe described in the preceding paragraph are not included in compensation unless the plan specifically includes such payments. Additionally, the final regulations permit a plan to specify that a post-severance payment from a nonqualified unfunded deferred compensation plan may be included in compensation if the payment is made within the timeframe described in the preceding paragraph, but only if the payment would have been made at the same time if the employee had continued his or her employment and only to the extent that the payment is includible in the employee's gross income.

As under the proposed regulations, the rule under the final regulations generally excluding payments after severance from employment from compensation does not apply to payments to an individual who does not currently perform services for the employer by reason of qualified military service (as that term is used in section 414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service. The final regulations modify the proposed regulations by adding another exception to the post-severance timing rule for compensation paid to a permanently and totally disabled participant, provided certain conditions are satisfied. As provided under the proposed regulations, the final regulations also contain corresponding amendments to the regulations under sections 401(k) and 457 that provide that amounts received following severance from employment can be deferred only if they are considered compensation under the rules of section 415.

Whether a person has a severance from employment with the employer that maintains a plan is determined for purposes of section 415 in the same manner as under § 1.401(k)-1(d)(2), except that for purposes of determining the employer of an employee, the rules of section 415(h) are taken into account (under which the phrase "more than 50 percent" is substituted for the phrase

"at least 80 percent" each place it appears in section 1563(a)(1) for purposes of applying section 414(b) and (c)). Thus, an employee has a severance when the employee ceases to be an employee of the employer maintaining the plan, and an employee does not have a severance from employment if, in connection with a change of employment, the employee's new employer maintains the plan with respect to the employee. In addition, the determination of whether an employee ceases to be an employee of the employer maintaining the plan is based on all of the relevant facts and circumstances. In the case of a multiemployer plan, a payment after severance from employment from an employer for whom services were provided is considered to be compensation within the meaning of section 415(c)(3) as long as the individual receiving the payment is employed by any employer maintaining the multiemployer plan. Thus, in the case of a multiemployer plan, an employee is treated as having a severance from employment only when the employee is no longer providing services to any employer maintaining the multiemployer plan. This rule is consistent with the treatment of a multiemployer plan as a single plan that is not disaggregated for purposes of applying the limitations of section 415.

As noted above, the final regulations provide that a plan cannot take into account compensation in excess of the section 401(a)(17) limit. In addition, the final regulations provide that elective deferrals can only be made from compensation as defined in section 415(c)(3). However, in applying these two rules, a plan is not required to determine a participant's compensation on the basis of the earliest payments of compensation during a year.

Commentators also requested clarification as to the treatment of nonresident aliens under all of the alternative definitions of compensation that the regulations allow. Commentators had noted that the various alternative definitions of compensation permitted under the 1981 regulations could be interpreted as including compensation paid to nonresident aliens, but the commentators observed that this issue was not sufficiently clear.

These regulations provide that amounts paid to an individual as compensation for services do not fail to be treated as compensation merely because those amounts are not includible in the individual's gross income on account of the location of the services. Similarly, these regulations

also provide that amounts paid to an individual as compensation for services do not fail to be treated as compensation merely because those amounts are paid by an employer with respect to which payments of compensation to the individual are excluded from gross income. Thus, for example, the determination of whether an amount is includible as compensation is made without regard to the exclusions from gross income under sections 872, 893, 894, 911, and 933.

Under these modified rules, an employee who is a nonresident alien with no United States sourced income is not prevented from participating in a qualified plan sponsored by the employee's employer on account of the limitations of section 415 that relate to the employee's compensation. These rules, however, do not modify other requirements with respect to such an employee's participation in a qualified plan, such as the rules relating to the entity that is properly entitled to a deduction for contributions made to the plan on account of the employee's participation.

These regulations also provide a rule of administrative convenience under which section 415 compensation does not include compensation paid to a nonresident alien, provided that the individual does not participate in the plan and the compensation is not effectively connected with the conduct of a trade or business within the United States, and only to the extent that the compensation is excludable from the individual's gross income either on account of the location of the services or because compensation paid by the employer is excludable from gross income. This is relevant for purposes of determining who is a key employee under the top heavy rules of section 416 and who is a highly compensated employee under the rules of section 414(q).

Like the proposed regulations, these final regulations generally retain the rules in the 1981 regulations regarding section 415 compensation and contributions to and distributions from plans of deferred compensation. Accordingly, these regulations provide that distributions from a plan of deferred compensation (whether or not qualified) are not compensation for section 415 purposes (but permit a plan to include as compensation amounts received by an employee pursuant to a nonqualified unfunded plan for the year in which the amounts are actually received) and provide that contributions made by an employer (other than elective contributions) to a plan of deferred compensation (whether or not

qualified) are not compensation to the extent that the contributions are not includible in the income of the employee for the taxable year in which contributed. The final regulations clarify that section 415 compensation includes amounts that are includible in the gross income of an employee under the rules of section 409A or section 457(f)(1)(A) or because the amounts are constructively received by the employee. The final regulations also clarify that a plan is permitted to include as compensation amounts received by an employee pursuant to a nonqualified deferred compensation plan only to the extent such amounts are includible in gross income.

#### Cost-of-Living Adjustments (§ 1.415(d)-1)

Section 1.415(d)-1 of these regulations sets forth rules that apply to cost-of-living adjustments to the various limitations of section 415 pursuant to section 415(d). Section 415(d) provides for the dollar and compensation limitations on annual benefits and the dollar limitation on annual additions to be adjusted annually for increases in the cost of living based on adjustment procedures similar to the procedures used to adjust social security benefit amounts. These adjustments also apply for other purposes as specified in the Code. These regulations specify the manner in which these adjustments are determined each year, and reflect statutory changes to the adjustment methodology made after the 1981 regulations were issued. In addition, these regulations make several other changes to the 1981 regulations, as discussed in this preamble. Section 1.415(d)-1 generally retains the rules set forth in the proposed regulations except as indicated in this preamble.

These regulations specify the circumstances under which an adjusted limit is permitted to be applied to participants who have previously commenced receiving benefits under a defined benefit plan. Under these regulations, the adjusted dollar limitation is applicable to current employees who are participants in a defined benefit plan and is permitted to apply to former employees who have retired or otherwise terminated their service under the plan and have a nonforfeitable right to accrued benefits, regardless of whether they have actually begun to receive benefits. If a participant has commenced receiving benefits, the annual increase is only permitted to be applied to the extent that benefits have not been paid. Thus, for example, a plan cannot provide that this annual increase applies to a

participant who has previously received the entire plan benefit in a single-sum distribution. However, a plan is permitted to provide for an increase in benefits to a participant to the extent the participant accrues additional benefits under the plan that could have been accrued without regard to the adjustment of the dollar limitation (including benefits that accrue as a result of a plan amendment) on or after the effective date of the adjusted limitation.

These regulations retain the safe harbor set forth in the proposed regulations under which the annual benefit will satisfy the limitations of section 415(b) for the current limitation year following an adjustment to benefit payments that is made to reflect the cost-of-living adjustment made pursuant to section 415(d). Under this safe harbor, if a plan incorporates by reference the annual section 415(d) cost-of-living adjustments to the limitations of section 415, a distribution that is increased solely as a result of the application of the section 415(d) cost-of-living adjustments to the applicable limits will be treated as continuing to satisfy the requirements of section 415(b) and is not subject to the multiple annuity starting date rules. In connection with the changes discussed in the following paragraph, this safe harbor has been relocated to § 1.415(a)-1(d)(3)(v).

Commentators expressed concern that the safe harbor in the proposed regulations did not cover situations where benefits are increased periodically by plan amendments that reflect the section 415(d) cost-of-living adjustments. After consideration of these comments, the IRS and the Treasury Department have determined that additional safe harbors are appropriate. Accordingly, under these final regulations, if a plan is amended to apply the adjusted section 415(b) limits in accordance with either of two safe harbors, a distribution that is increased pursuant to the amendment will be treated as continuing to satisfy the requirements of section 415(b).

A plan amendment satisfies the first safe harbor if the employee has received one or more distributions that satisfy the requirements of section 415(b) before the date the adjustment to the applicable limits is effective, the increased distribution is solely as a result of the amendment of the plan to reflect the adjustment to the applicable limits pursuant to section 415(d), and the amounts payable to the employee on and after the effective date of the adjustment are not greater than the amounts that would otherwise be

payable without regard to the adjustment, multiplied by a fraction determined for the limitation year, the numerator of which is the limitation under section 415(b) (which is the lesser of the applicable dollar limitation under section 415(b)(1)(A), as adjusted for age at commencement, and the applicable compensation-based limitation under section 415(b)(1)(B)) in effect for the distribution following the section 415(d) adjustment, and the denominator of which is such limitation under section 415(b) in effect for the distribution immediately before the section 415(d) adjustment.

A plan amendment satisfies the second safe harbor if the employee has received one or more distributions that satisfy the requirements of section 415(b) before the date on which the increased distribution is effective, and the amounts payable to the employee on and after the effective date for the increased distribution are not greater than the amounts that would otherwise be payable without regard to the increase, multiplied by the cumulative adjustment fraction. The cumulative adjustment fraction is equal to the product of all of the annual fractions (described in the first safe harbor) that would have applied after benefits commence if the plan had been amended each year to incorporate the section 415(d) adjustments to the applicable section 415(b) limits in accordance with the first safe harbor. In determining the cumulative adjustment fraction, if for the limitation year for which the adjustment in the section 415(b)(1)(A) dollar limit pursuant to EGTRRA is first effective (generally, the first limitation year beginning after December 31, 2001), the section 415(b)(1)(A) dollar limit applicable to a participant is less than the section 415(b)(1)(B) compensation limit, then the annual fraction for such year is 1.0.

#### Aggregating Plans (§ 1.415(f)-1)

Section 1.415(f)-1 of these regulations sets forth rules for aggregating plans pursuant to section 415(f). Section 1.415(f)-1 generally retains the rules set forth in the proposed regulations except as indicated in this preamble. Under section 415(f) and these regulations, for purposes of applying the limitations of section 415(b) and (c), all defined benefit plans that have ever been maintained by an employer are treated as one defined benefit plan, and all defined contribution plans that have ever been maintained by an employer are treated as one defined contribution plan. The controlled group rules of section 414(b) and (c) (as modified by section 415(h)), the affiliated service

group rules of section 414(m), and the leased employee rules of section 414(n) apply for purposes of determining whether a plan that is maintained by an entity other than the employer is considered maintained by the employer for purposes of applying the aggregation rules of section 415(f). These basic employer aggregation rules were also contained in the 1981 regulations.

One commentator noted that the proposed regulations incorrectly reflected the rules of section 415(h) (which applies a 50 percent standard in lieu of an 80 percent standard for purposes of applying the control rules) by applying those rules in determining whether two or more organizations are a brother-sister group of trades or businesses under common control under the rules in § 1.414(c)-2(c). These final regulations provide that the rules of section 415(h) do not apply for this purpose.

These final regulations make various changes and clarifications to the 1981 regulations relating to aggregating plans. As under the proposed regulations, these final regulations clarify that an employer's plan must be aggregated with all plans maintained by a predecessor employer (see section 414(a)), regardless of whether any such plan is assumed by the employer.

As under the proposed regulations, the final regulations provide that a former employer is a predecessor employer with respect to a participant in a plan maintained by an employer if the employer maintains a plan under which the participant had accrued a benefit while performing services for the former employer, but only if that benefit is provided under the plan maintained by the employer. In addition, as under the proposed regulations, these final regulations provide pursuant to section 414(a)(2) that, with respect to an employer of a participant, a former entity that antedates the employer is a predecessor employer with respect to the participant if, under the facts and circumstances, the employer constitutes a continuation of all or a portion of the trade or business of the former entity. This will occur, for example, where formation of the employer constitutes a mere formal or technical change in the employment relationship and continuity otherwise exists in the substance and administration of the business operations of the former entity and the employer. See *Lear Eye Clinic, Ltd. v. Commissioner*, 106 T.C. 418, 425 (1996).

These final regulations make several other changes to the employer aggregation rules. These changes limit the extent to which a plan maintained by an employer must aggregate benefits

accrued under a plan that was formerly maintained by the employer or that was maintained by an entity that was formerly affiliated with the employer under the employer aggregation rules of § 1.415(a)-1(f)(1) and (2) (which provide that a plan maintained by any member of a controlled group of employers or an affiliated service group is deemed to be maintained by all members of the group). Under these final regulations, a "formerly affiliated plan" of an employer is treated as if it were a plan that terminated immediately prior to the "cessation of affiliation" with sufficient assets to pay benefit liabilities under the plan, and had purchased annuities to provide plan benefits. The final regulations define a formerly affiliated plan of an employer as a plan that, immediately prior to the cessation of affiliation, was actually maintained by one or more of the entities that constitute the employer (as determined under the employer affiliation rules of § 1.415(a)-1(f)(1) and (2)), and that, immediately after the cessation of affiliation, is not actually maintained by any of the entities that constitute the employer (as determined under the employer affiliation rules of § 1.415(a)-1(f)(1) and (2)). The final regulations define a cessation of affiliation as the event that causes an entity to no longer be aggregated with one or more other entities as a single employer under the employer affiliation rules (such as a sale of a subsidiary) or an event that causes a plan to not actually be maintained by any of the entities that constitute the employer (such as a transfer of sponsorship of a plan to an unrelated employer).

A similar rule is provided under these final regulations with respect to a plan (or portion of a plan) maintained by a predecessor employer that is not assumed by the successor employer. As under the proposed regulations, the final regulations provide that all plans ever maintained by an employer or predecessor employer are aggregated. For purposes of applying this aggregation rule, these final regulations limit the extent to which plans that are not maintained by an employer but that are maintained by the employer's predecessor employer are taken into account when aggregating the employer's plans. This limit provides that a plan that is not maintained by the employer and is maintained by the employer's predecessor employer is treated as if the plan terminated (with sufficient assets to pay benefit liabilities under the plan) immediately prior to the event giving rise to the predecessor employer relationship. The effect of

these rules is that, for purposes of aggregating the predecessor employer's plans with plans maintained by the employer, benefits accrued after the transfer of benefits from the predecessor employer's plan to the employer's plan are excluded.

These final regulations also add a rule that prevents the double counting of a participant's benefit when applying the aggregation rules. For example, in aggregating defined benefit plans of a predecessor employer with the defined benefit plans of an employer following a transfer of benefits to the plan maintained by the employer from the plan maintained by the predecessor employer, the transferee plan (maintained by the employer) does not double count a participant's benefit by taking into account both the transferred benefits and the portion of the transferor plan (maintained by the predecessor employer) that is deemed to have terminated on account of the transfer pursuant to § 1.415(b)-1(b)(3)(i)(B). Instead, the transferee plan includes the benefits that are actually provided under the transferee plan when applying the aggregation rule.

The proposed regulations provided rules for applying the requirements of section 415(f)(2) when an employer has more than one defined benefit plan. Pursuant to section 415(f)(2), the proposed regulations provided that the compensation limit of section 415(b)(1)(B) is applied separately with respect to each plan, and in applying the compensation limit to the aggregated plans, the plans calculate a participant's average compensation for the participant's high 3 years of service by taking into account compensation for all years of active participation in the aggregated plans. Because the requirements of section 415(f)(2) have been rendered moot by the amendment to section 415(b)(3) made by section 832 of PPA '06, these rules have not been incorporated into the final regulations.

These regulations provide rules for aggregating participation and service for purposes of the 10-year phase-in of the limitations on defined benefit plans. Under these rules, years of participation in all aggregated plans and years of service for employers maintaining all aggregated plans are counted for purposes of applying the 10-year phase-in rules.

These regulations clarify the aggregation rules that apply to section 403(b) annuity contracts, other plans of the employer, and plans of related employers, in light of changes made in EGTRRA. Generally, a section 403(b) annuity contract is not aggregated with plans that are maintained by the

participant's employer because the section 403(b) annuity contract is deemed maintained by the participant and not the employer for purposes of section 415. However, if a participant on whose behalf a section 403(b) annuity contract is purchased is in control of any employer for a limitation year, the annuity contract for the benefit of the participant is treated as a defined contribution plan maintained by both the controlled employer and the participant for that limitation year and accordingly, the section 403(b) annuity contract is aggregated with all other defined contribution plans maintained by the employer. Accordingly, the employer that contributes to the section 403(b) annuity contract must obtain information from participants regarding employers controlled by those participants and plans maintained by those controlled employers to monitor compliance with applicable limitations to comply with applicable reporting and withholding obligations.

In general, under these regulations, the benefits provided by all plans maintained by all employers maintaining a multiemployer plan (as defined in section 414(f)) are taken into account in applying the limitations of section 415 to the multiemployer plan. However, a multiemployer plan is permitted to provide that, where a participating employer maintains both a plan which is not a multiemployer plan and a multiemployer plan, only the benefits provided by the employer under the multiemployer plan are aggregated with the benefits under the non-multiemployer plan. By contrast, when a multiple employer plan is aggregated with a single employer plan maintained by the same employer, all of the benefits provided by the multiple employer plan must be taken into account in determining whether the aggregated plans satisfy section 415. These regulations also provide that a multiemployer plan is not aggregated with any other multiemployer plan for purposes of determining any section 415 limitation. In addition, a multiemployer plan is not aggregated with any other non-multiemployer plan for purposes of applying the 100 percent of compensation benefit limit to non-multiemployer plans under section 415(b)(1)(B).

#### Disqualification of Plans and Trusts (§ 1.415(g)-1)

Section 1.415(g)-1 of these final regulations sets forth rules regarding disqualification of plans and trusts, including plans and trusts that are aggregated pursuant to § 1.415(f)-1. In large part, § 1.415(g)-1 of these

regulations replicates the rules of § 1.415-9 of the 1981 regulations regarding ordering rules for disqualifying plans and trusts that are aggregated for purposes of compliance with section 415. In addition, the final regulations provide rules for disqualification where an individual medical benefit account (as described in section 415(l)) and a post-retirement medical benefits account for key employees (as described in section 419A(d)) is aggregated with a qualified defined contribution plan for purposes of applying section 415(c). If the total of the annual additions under both plans exceeds those limitations for a particular limitation year, the qualified defined contribution plan (rather than the medical benefit account) is disqualified for the limitation year.

#### Limitation Year (§ 1.415(j)-1)

Section 1.415(j)-1 of the regulations sets forth rules regarding limitation years that are used as the period for demonstrating compliance with section 415. Section 1.415(j)-1 generally retains the rules set forth in the proposed regulations except as indicated in this preamble. In addition to setting forth general rules that generally correspond to rules under the 1981 regulations, these regulations provide specific guidelines with respect to overlapping limitation years for aggregated plans. These rules reflect the guidance provided in Rev. Rul. 79-5 (1979-1 CB 165) (see § 601.601(d)(2)). Where defined contribution plans with different limitation years are aggregated, the rules of section 415(c) must be applied with respect to each limitation year of each such plan. For each such limitation year, the requirements of section 415(c) are applied to annual additions that are made for that time period with respect to the participant under all aggregated plans. Similarly, where defined benefit plans with different limitation years are aggregated, the rules of section 415(b) must be applied with respect to each limitation year of each such plan. Thus, for example, the dollar limitation of section 415(b)(1)(A) applicable to the limitation year for each plan must be applied to annual benefits under all aggregated plans to determine whether the plan satisfies the requirements of section 415(b).

These final regulations add a rule that applies to a terminating defined contribution plan. If a defined contribution plan is terminated effective as of a date other than the last day of the plan's limitation year, the plan is deemed to have been amended to change its limitation year. As a result of

this deemed amendment, the section 415(c)(1)(A) dollar limit must be pro-rated under the short limitation year rules.

#### Sections 415(m) and (n)

Sections 415(m) and (n) have not been addressed in these regulations. Comments received concerning these provisions in response to the notice of proposed rulemaking that preceded these regulations will be considered for guidance at a later date.

#### Section 416 Regulations

These regulations update the definition of compensation used for purposes of applying the top heavy rules of section 416. Pursuant to statutory amendments to the definition of compensation under section 415(c)(3) under SBJPA and CRA (which were generally effective for years beginning after December 31, 1997), these regulations update the alternative definition of compensation permitted under the section 416 regulations (which is based on compensation reported on Form W-2, "Wage and Tax Statement") to include amounts that would be included on Form W-2 but for an election under sections 125, 132(f)(4), 401(k), 403(b), 408(k), 408(p)(2)(A)(i), or 457(b).

#### Section 457 Regulations

These regulations include revisions to the regulations under section 457 that are in addition to the revisions to reflect the treatment of compensation paid after severance from employment (§ 1.457-4(d)). The additional revisions do not include any substantive changes, but merely make clarifications, including revisions in an example illustrating the section 457 catch-up rules (§ 1.457-5(d) *Example 2*) and a change in the rules relating to unforeseeable emergencies to reflect revisions in the definition of a dependent (made under WFTRA, which modified the definition of the term "dependent" under section 152) (§ 1.457-6(c)).

#### Effective Dates

##### *In General*

These regulations generally apply to limitation years beginning on or after July 1, 2007. However, § 1.401(k)-1(e)(8) applies with respect to compensation paid (or that would have been paid but for a cash or deferred election) in plan years beginning on or after July 1, 2007, and the amendment to § 1.457-4(d) applies to taxable years beginning on or after December 31, 2001 (see § 1.457-12). See §§ 1.457-6(c)(2)(i) and 1.457-12 for the applicability of the modifications to §§ 1.457-5, 1.457-6, and 1.457-10. In

the case of a governmental plan (within the meaning of section 414(d)), §§ 1.415(a)-1, 1.415(b)-1, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1, and 1.415(j)-1 apply to limitation years that begin more than 90 days after the close of the first regular legislative session of the legislative body with authority to amend the plan that begins on or after July 1, 2007. However, a governmental plan is permitted to apply the provisions of §§ 1.415(a)-1, 1.415(b)-1, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1, and 1.415(j)-1 to limitation years beginning on or after July 1, 2007.

In response to commentator concerns, and as provided in Notice 2005-87, these regulations reflect revisions to the effective date provisions of the proposed regulations to expand the benefits that are grandfathered from the application of these regulations. Under these regulations, a defined benefit plan is considered to satisfy the limitations of section 415(b) for a participant with respect to benefits accrued or payable under the plan as of the end of the limitation year that is immediately prior to the effective date of these final regulations for the plan pursuant to plan provisions (including plan provisions relating to the plan's limitation year) that were both adopted and in effect before April 5, 2007, but only if such plan provisions meet the requirements of statutory provisions, regulations, and other published guidance in effect immediately before the effective date of these final regulations. For this purpose, plan provisions will not be treated as failing to satisfy the requirements of statutory provisions, regulations, and other published guidance in effect immediately before the effective date of these final regulations merely because the plan has not been amended to reflect changes to section 415(b) made by PFEA and PPA '06. In addition, for this purpose, plan provisions will not be treated as failing to satisfy the requirements of section 415(b)(1)(B) merely because the plan's definition of compensation for a limitation year that is used for purposes of applying the limitations of section 415(b)(1)(B) reflects compensation for a plan year that is in excess of the limitation under section 401(a)(17) that applies to that plan year. Thus, plans that were in compliance with the rules of section 415 as in effect for limitation years prior to the effective date of these regulations for the plan will not be disqualified based on benefits that arise pursuant to plan provisions that were both adopted and in effect before April 5, 2007, and that accrue prior to the effective date of these

regulations for the plan, even if those benefits no longer comply with the requirements of section 415 as set forth under these final regulations. However, such a plan will not be permitted to provide for the accrual of additional benefits for a participant on or after the effective date of these regulations for the plan unless such additional benefits, together with the participant's other accrued benefits, comply with these regulations.

The preamble to the proposed regulations provided that, pending issuance of final regulations, taxpayers may rely on the modifications contained in the proposed regulations in § 1.401(k)-1(e)(8), § 1.415(c)-2(e), and § 1.457-4(d) regarding post-severance compensation payments and other compensation timing rules. Accordingly, taxpayers may apply those proposed amendments for periods prior to the effective date of these final regulations. The final regulations also provide that taxpayers may apply the post-severance compensation payments and other compensation timing rules contained in the final regulations in § 1.415(c)-2(e) for years prior to the effective date of these final regulations. This early application also is used for purposes of determining compensation in §§ 1.401(k)-1(e)(8) and 1.457-4(d).

#### *Plan Amendment Timing*

Generally, a provision of a plan that results in a failure of the plan to satisfy these final regulations is a disqualifying provision described in § 1.401(b)-1(b)(3)(i). Therefore, the remedial amendment period rules of § 1.401(b)-1 apply. For example, in the case of a plan with a calendar plan year and a calendar limitation year that is maintained by an employer with a calendar taxable year (and the plan is not a governmental plan), the plan's remedial amendment period with respect to a disqualifying plan provision as a result of these final regulations ends on the date prescribed by law for the filing of the employer's income tax return (including extensions) for the 2008 taxable year. In addition, special timing rules apply in the case of certain plan amendments made pursuant to changes made to section 415 by PFEA and PPA '06.

Under section 101(c) of PFEA (prior to amendment by PPA '06), a plan amendment to reflect the 5.5 percent interest rate assumption that is generally required to be used for distributions with annuity starting dates in plan years beginning in years 2004 and 2005 under section 101(b)(4) of PFEA (for determining the actuarially equivalent straight life annuity for a form of benefit that is subject to section 417(e)) must be

made on or before the last day of the first plan year beginning on or after January 1, 2006. Section 301(c) of PPA '06 modified section 101(c) of PFEA by extending the due date for the amendment required under section 101(b)(4) of PFEA to on or before the last day of the first plan year beginning on or after January 1, 2008. Thus, pursuant to section 101(c) of PFEA (as amended by PPA '06), in the case of an amendment to a plan with a calendar year plan year to reflect the interest rate assumption specified by section 101(b)(4) of PFEA, the plan is treated as having been operated in accordance with its terms and the amendment does not violate section 411(d)(6), provided that the plan is operated in conformity with the amendment and the amendment is adopted no later than December 31, 2008.

Under section 1107 of PPA '06, a plan amendment that is made pursuant to PPA '06 (or a regulation issued by the Secretary under PPA '06) must be made on or before the last day of the first plan year beginning on or after January 1, 2009 (January 1, 2011, in the case of a governmental plan within the meaning of section 414(d)). Under section 1107 of PPA '06, if the plan is amended by such date and the plan is operated in conformity with the amendment, the plan is treated as having been operated in accordance with its terms and the amendment does not cause the plan to fail to meet the requirements of section 411(d)(6). A plan amendment is treated as an amendment that is made pursuant to a statutory amendment made by PPA '06 (or a regulation issued by the Secretary under PPA '06) if the amendment is: (i) A plan amendment to reflect the changes to the assumptions in section 415(b)(2)(E) that are used for converting certain forms of benefits to an equivalent straight life annuity in a limitation year beginning on or after January 1, 2006 (section 303 of PPA '06); (ii) a plan amendment to reflect the modifications to the purchase of permissive service credit rules of section 415(n) (section 821 of PPA '06); (iii) a plan amendment to incorporate the exemption from the section 415(b)(1)(B) compensation limit for certain benefits provided under a defined benefit plan maintained by an organization described in section 3121(w)(3)(A) (section 867 of PPA '06); and (iv) a plan amendment to reflect the expansion of the definition of qualified participant in section 415(b)(2)(H) to include certain participants in a defined benefit plan maintained by an Indian tribal government (section 906(b) of PPA '06). However, section 1107 of PPA '06

does not apply for other amendments required by these regulations, unless such amendments are pursuant to a provision of PPA '06 that did not amend section 415 (for example, section 906 of PPA '06, relating to the definition of governmental plan in section 414(d)). Accordingly, there is no extension of the remedial amendment period for such amendments, and such amendments are subject to the requirements of section 411(d)(6).

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C.

chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal authors of these regulations are Vernon S. Carter and Linda S. F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), and Christopher A. Crouch, formerly of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

**List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 11*

Income taxes, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

■ Accordingly, 26 CFR parts 1 and 11 are amended as follows:

**PART 1—INCOME TAXES**

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** For each section set forth in the table, remove the text that appears in the column labeled "Remove" and add the text that appears in the column labeled "Add" in its place.

Regulation cite	Remove	Add
§ 1.401(a)-1(b)(1)(iii) .....	1.415-1(d)(1) .....	1.415(a)-1(d)(1)
§ 1.401(a)(4)-2(c)(2)(ii) .....	1.415-6(b)(2)(i) .....	1.415(c)-1(b)(4)
§ 1.414(s)-1(c)(2) .....	1.415-2(d)(2) and (d)(3) .....	1.415(c)-2(b) and (c)
§ 1.414(s)-1(c)(2) .....	1.415-2(d)(10) and (d)(11) .....	1.415(c)-2(d)(2), (d)(3) and (d)(4)
§ 1.414(s)-1(c)(2) .....	1.415-2(d)(13) .....	1.415(c)-2(d)(1)
§ 1.924(c)-1(d)(6) .....	paragraphs (d)(1) and (2) of § 1.415-2 .....	§ 1.415(c)-2(b) and (c)

■ **Par. 3.** Section 1.401(a)-2(b) is revised to read as follows:

**§ 1.401(a)-2 Impossibility of diversion under qualified plan or trust.**

\* \* \* \* \*

(b) *Section 415 suspense account.* Notwithstanding paragraph (a) of this section, a plan, or trust forming part of a plan, may provide for the reversion to the employer, upon termination of the plan, of amounts contributed to the plan that exceed the limitations imposed under section 415(c), to the extent set forth in rules prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

■ **Par. 4.** Section 1.401(a)(9)-5, A-9(b)(1) is revised to read as follows:

**§ 1.401(a)(9)-5 Required minimum distributions from defined contribution plans.**

\* \* \* \* \*

A-9. \* \* \*  
(b) \* \* \*

(1) Elective deferrals (as defined in section 402(g)(3)) and employee contributions that, pursuant to rules prescribed by the Commissioner in revenue rulings, notices, or other

guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), are returned to the employee (together with the income allocable thereto) in order to comply with the section 415 limitations.

\* \* \* \* \*

■ **Par. 5.** Section 1.401(k)-1 is amended by adding paragraph (e)(8) to read as follows:

**§ 1.401(k)-1 Certain cash or deferred arrangements.**

\* \* \* \* \*

(e) \* \* \*

(8) *Section 415 compensation required.* With respect to compensation that is paid (or would have been paid but for a cash or deferred election) in plan years beginning on or after July 1, 2007, a cash or deferred arrangement satisfies this paragraph (e) only if cash or deferred elections can only be made with respect to amounts that are compensation within the meaning of section 415(c)(3) and § 1.415(c)-2. Thus, for example, the arrangement is not a qualified cash or deferred arrangement if an eligible employee who is not in qualified military service (as that term is defined in section 414(u)) and who is not permanently and totally disabled (as

defined in section 22(e)(3)) can make a cash or deferred election with respect to an amount paid after severance from employment, unless the amount is paid by the later of 2½ months after severance from employment or the end of the year that includes the date of severance from employment and is described in § 1.415(c)-2(e)(3)(ii) or (iii).

\* \* \* \* \*

■ **Par. 6.** Section 1.402(c)-2, A-4(a) is revised to read as follows:

**§ 1.402(c)-2 Eligible rollover distributions; questions and answers.**

\* \* \* \* \*

A-4 \* \* \*

(a) Elective deferrals (as defined in section 402(g)(3)) and employee contributions that, pursuant to rules prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), are returned to the employee (together with the income allocable thereto) in order to comply with the section 415 limitations.

\* \* \* \* \*

**§§ 1.415-1 through 1.415-10 [Removed]**

■ **Par. 7.** Sections 1.415-1 through 1.415-10 are removed.

■ **Par. 8.** Section 1.415(a)-1 is added to read as follows:

**§ 1.415(a)-1 General rules with respect to limitations on benefits and contributions under qualified plans.**

(a) *Trusts.* Under sections 415 and 401(a)(16), a trust that forms part of a pension, profit-sharing, or stock bonus plan will not be qualified under section 401(a) if any of the following conditions exists:

(1) In the case of a defined benefit plan, the annual benefit with respect to any participant for any limitation year exceeds the limitations of section 415(b) and § 1.415(b)-1.

(2) In the case of a defined contribution plan, the annual additions credited with respect to any participant for any limitation year exceed the limitations of section 415(c) and § 1.415(c)-1.

(3) The trust has been disqualified under section 415(g) and § 1.415(g)-1 for any year.

**(b) Certain annuities and accounts—**

(1) *In general.* Under section 415, an employee annuity plan described in section 403(a), an annuity contract described in section 403(b), or a simplified employee pension described in section 408(k) will not be considered to be described in the otherwise applicable section if any of the following conditions exists:

(i) The annual benefit under a defined benefit plan with respect to any participant for any limitation year exceeds the limitations of section 415(b) and § 1.415(b)-1.

(ii) The contributions and other additions credited under a defined contribution plan with respect to any participant for any limitation year exceed the limitations of section 415(c) and § 1.415(c)-1.

(iii) The employee annuity plan, annuity contract, or simplified employee pension has been disqualified under section 415(g) and § 1.415(g)-1 for any year.

(2) *Special rule for section 403(b) annuity contracts.* If the contributions and other additions under an annuity contract that otherwise satisfies the requirements of section 403(b) exceed the limitations of section 415(c) and § 1.415(c)-1 with respect to any participant for any limitation year (regardless of whether the annuity contract is a defined contribution plan or a defined benefit plan), then the portion of the contract that includes such excess annual addition fails to be a section 403(b) annuity contract, and

the remaining portion of the contract is a section 403(b) annuity contract. However, the status of the remaining portion of the contract as a section 403(b) annuity contract is not retained unless, for the year of the excess and each year thereafter, the issuer of the contract maintains separate accounts for each such portion. In addition, if the benefit under an annuity contract that is a defined benefit plan and that otherwise satisfies the requirements of section 403(b) exceeds the limitations of section 415(b) and § 1.415(b)-1 with respect to any participant for any limitation year, then the contract fails to be a section 403(b) annuity contract.

(3) *Section 403(b) annuity contract.* For purposes of section 415 and regulations promulgated under section 415, the term *section 403(b) annuity contract* includes arrangements that are treated as annuity contracts for purposes of section 403(b). Thus, such term includes custodial accounts described in section 403(b)(7) and retirement income accounts described in section 403(b)(9).

(c) *Regulations—(1) In general.* This section provides general rules regarding the application of section 415. For further rules regarding the application of section 415, see—

(i) Section 1.415(b)-1 (for general rules regarding the limits applicable to defined benefit plans);

(ii) Section 1.415(b)-2 (for special rules for defined benefit plans where a participant has multiple annuity starting dates);

(iii) Section 1.415(c)-1 (for general rules regarding the limits applicable to defined contribution plans);

(iv) Section 1.415(c)-2 (for rules regarding the definition of compensation for purposes of section 415);

(v) Section 1.415(d)-1 (for rules regarding cost-of-living adjustments to the various limits of section 415);

(vi) Section 1.415(f)-1 (for rules for aggregating plans for purposes of section 415);

(vii) Section 1.415(g)-1 (for rules regarding disqualification of plans that fail to satisfy the requirements of section 415); and

(viii) Section 1.415(j)-1 (for rules regarding limitation years).

(2) *Cross references to special rules for section 403(b) annuity contracts.* For special rules relating to section 403(b) annuity contracts, see—

(i) Section 1.415(c)-2(g)(1) and (3) (relating to the definition of compensation for section 403(b) annuity contracts);

(ii) Section 1.415(f)-1(f) (relating to rules for section 403(b) annuity

contracts for purposes of aggregating plans);

(iii) Section 1.415(g)-1(b)(3)(iv)(C) (regarding disqualification of a section 403(b) annuity contract aggregated with a qualified defined contribution plan if the aggregated plans exceed the limitations of section 415(c));

(iv) Section 1.415(g)-1(c) (relating to the plan year for section 403(b) annuity contracts); and

(v) Section 1.415(j)-1(e) (relating to the limitation year for section 403(b) annuity contracts).

(3) *Cross references to special rules for governmental plans.* For special rules relating to governmental plans, see—

(i) Paragraph (f)(4) of this section (regarding permissive service credits);

(ii) Paragraph (g)(2) of this section (providing a delayed effective date for governmental plans);

(iii) Section 1.415(b)-1(a)(6)(i) (providing an exception from the compensation-based limit of section 415(b)(1)(B) for governmental plans);

(iv) Section 1.415(b)-1(a)(7)(ii) (regarding a special limitation for certain governmental plans making an election during 1990);

(v) Section 1.415(b)-1(b)(4) (regarding qualified governmental excess benefit arrangements);

(vi) Section 1.415(b)-1(d)(3) and (4) (regarding age adjustments to the dollar limit of section 415(b)(1)(A) for employees of police and fire departments and members of the Armed Forces of the United States, and for survivor and disability benefits);

(vii) Section 1.415(b)-1(g)(3) (regarding adjustments to applicable limitations for years of participation, and adjustments to applicable limitations for years of service for survivor and disability benefits under governmental plans);

(viii) Section 1.415(c)-1(b)(2)(ii) and (3)(iii) (regarding amounts not treated as annual additions under governmental plans); and

(ix) Section 1.415(c)-2(e)(5) (providing an alternative rule for inclusion of compensation after a severance from employment for governmental plans).

(4) *Cross references to special rules for multiemployer plans.* For special rules relating to multiemployer plans as defined in section 414(f), see—

(i) Paragraph (e) of this section (regarding benefits or contributions taken into account where a plan is maintained by more than one employer);

(ii) Paragraph (f)(5)(ii) of this section (providing a special definition of severance from employment for multiemployer plans);

(iii) Section 1.415(b)-1(a)(6)(ii) (providing an exception from the compensation-based limit for multiemployer plans);

(iv) Section 1.415(b)-1(f)(3) (regarding the application of the minimum \$10,000 limitation on benefits in the case of a multiemployer plan);

(v) Section 1.415(f)-1(g) (providing special rules for aggregating multiemployer plans with other plans); and

(vi) Section 1.415(g)-1(b)(3)(ii) (regarding plan disqualification rules where a multiemployer plan is aggregated with a plan that is not a multiemployer plan and the aggregated plans exceed the limitations of section 415).

(5) *Cross references to special rules for plans that are not subject to the requirements of section 411.* For special rules relating to plans that are not subject to the requirements of section 411, see—

(i) Paragraph (d)(1) of this section and § 1.415(b)-1(a)(7)(iii) (providing that the rule limiting accruals to the section 415(b) limits does not apply to plans that are not subject to the requirements of section 411); and

(ii) Section 1.415(b)-1(b)(2)(iii) (providing rules for applying the section 411(c) factors in determining the annual benefit attributable to employee contributions for plans that are not subject to the requirements of section 411).

(6) *Cross references to special rules for plans maintained by churches.* For special rules relating to plans maintained by churches as defined in section 3121(w)(3)(A), see §§ 1.415(b)-1(a)(6)(iv) and 1.415(b)-1(a)(7)(iv) (providing an exception from the compensation-based limit for participants who have never been a highly compensated employee of the church).

(d) *Plan provisions—(1) In general.* Although no specific plan provision is required under section 415 in order for a plan to establish or maintain its qualification, the plan provisions must preclude the possibility that any distribution under a defined benefit plan or annual addition under a defined contribution plan will exceed the limitations of section 415. In addition, a defined benefit plan that is subject to the requirements of section 411 must preclude the possibility that any accrual under the plan will exceed the limitations of section 415. A defined benefit plan may include provisions that automatically freeze or reduce the rate of benefit accrual (or limit the benefit payable in the case of a plan that is not subject to the requirements of section

411), and a defined contribution plan may include provisions that automatically limit the annual addition to a level necessary to prevent the limitations of section 415 from being exceeded with respect to any participant. For rules relating to this type of plan provision and the definitely determinable benefit requirement for pension plans, see § 1.401(a)-1(b)(1)(iii). Because § 1.401(a)-1(b)(1)(iii) requires that the operation of such a provision preclude discretion by the employer, if two defined benefit plans that are aggregated under the rules of section 415(f) would otherwise provide for aggregate benefits that might exceed the limits of section 415(b), the plan provisions must specify (without involving employer discretion) how benefits will be limited to prevent a violation of section 415(b).

(2) *Special rule for profit-sharing and stock bonus plans.* A provision of a profit-sharing or stock bonus plan that automatically freezes or reduces the amount of annual additions to ensure that the limitations of section 415 will not be exceeded must comply with the requirement set forth in § 1.401-1(b)(1)(ii) or (iii) (as applicable) that such plans provide a definite predetermined formula for allocating the contributions made to the plan among the participants. If the operation of a provision that automatically freezes or reduces the amount of annual additions to ensure that the limitations of section 415 are not exceeded does not involve discretionary action on the part of the employer, the definite predetermined allocation formula requirement is not violated by the provision. If the operation of such a provision involves discretionary action on the part of the employer, the definite predetermined allocation formula requirement is violated. For example, if two profit-sharing plans of one employer otherwise provide for aggregate contributions which may exceed the limits of section 415(c), the plan provisions must specify (without involving employer discretion) under which plan contributions and allocations will be reduced to prevent an excess annual addition and how the reduction will occur.

(3) *Incorporation by reference—(i) In general.* A plan is permitted to incorporate by reference the limitations of section 415, and will not fail to meet the definitely determinable benefit requirement or the definite predetermined allocation formula requirement, whichever applies to the plan, merely because it incorporates the limits of section 415 by reference.

(ii) *Section 415 can be applied in more than one manner, but a statutory or regulatory default rule exists.* Where a provision of section 415 is permitted to be applied in more than one manner but is to be applied in a specified manner in the absence of contrary plan provisions (in other words, a default rule exists), if a plan incorporates the limitations of section 415 by reference with respect to that provision of section 415 and does not specifically vary from the default rule, then the default rule applies. With respect to a provision of section 415 for which a default rule exists, if the limitations of section 415 are to be applied in a manner other than using the default rule, the plan must specify the manner in which the limitation is to be applied in addition to generally incorporating the limitations of section 415 by reference. For example, if a plan generally incorporates the limitations of section 415 by reference and does not restrict the accrued benefits to which the amendments to section 415(b)(2)(E) made by the Uruguay Round Agreements Act of 1994, Public Law 103-465 (108 Stat. 4809) (GATT), apply (as permitted by Q&A-12 of Rev. Rul. 98-1 (1998-1 CB 249) (see § 601.601(d)(2) of this chapter), which reflects the amendments to section 767 of GATT made by section 1449 of the Small Business Job Protection Act of 1996, Public Law 104-188 (110 Stat. 1755)), then the amendments to section 415(b)(2)(E) made by GATT apply to all benefits under the plan.

(iii) *Section 415 can be applied in more than one manner with no statutory or regulatory default.* If a limitation of section 415 may be applied in more than one manner, and if there is no governing principle pursuant to which that limitation is applied in the absence of contrary plan provisions, then the plan must specify the manner in which the limitation is to be applied in addition to generally incorporating the limitations of section 415 by reference. For example, if an employer maintains two profit-sharing plans, and if any participant participates in more than one such plan, then both plans must specify (in a consistent manner) under which of the employer's two profit-sharing plans annual additions must be reduced if aggregate annual additions would otherwise exceed the limitations of section 415(c).

(iv) *Former requirements.* A plan is not permitted to incorporate by reference formerly applicable requirements of section 415 that are no longer in force (such as the limits of former section 415(e)).

(v) *Cost-of-living adjustments*—(A) *In general.* A plan is permitted to incorporate by reference the annual adjustments to the limitations of section 415 that are made pursuant to section 415(d). See § 1.415(d)–1 for additional rules relating to cost-of-living adjustments under section 415(d).

(B) *Cost-of-living adjustments not included in accrued benefit until effective.* Notwithstanding that a plan incorporates the increases to the applicable limits under section 415(d) by reference, the accrued benefit of a participant for purposes of section 411 and any amount payable to a participant for purposes of § 1.415(b)–1(a)(1) are not permitted to reflect increases pursuant to the annual increase under section 415(d) of the dollar limitation described in section 415(b)(1)(A) or the compensation limit described in section 415(b)(1)(B) for any period before the annual increase becomes effective. See § 1.415(d)–1(a)(3) for rules relating to when the annual adjustments to the dollar and compensation limitations are effective. A plan amendment does not violate the requirements of section 411(d)(6) merely because it eliminates the incorporation by reference of the increases under section 415(d) with respect to increases that have not yet occurred.

(C) *Application of increase in defined benefit dollar limit to participants who have incurred a severance from employment or commenced receiving benefits.* If a plan incorporates by reference the annual adjustments to the limitations of section 415 pursuant to this paragraph (d)(3)(v), the plan will be treated as applying the section 415(d) cost-of-living adjustments to the maximum extent permitted under the safe harbor described in § 1.415(d)–1(a)(5), except to the extent provided in this paragraph (d)(3)(v)(C). Thus, such a plan is not subject to the requirements of § 1.415(b)–1(b)(1)(iii) (providing special rules for determining the annual benefit of an employee in the case of multiple annuity starting dates) with respect to benefit increases that result solely from an increase in the section 415(b) limits pursuant to section 415(d). If a plan incorporates by reference the annual adjustments to the limitations of section 415 pursuant to this paragraph (d)(3)(v), the annual increase under section 415(d) of the dollar limitation described in section 415(b)(1)(A) does not apply with respect to a participant if the increase is effective after the participant's severance from employment with the employer maintaining the plan (or, if earlier, after the annuity starting date in the case of a participant who has commenced

receiving benefits), unless the plan specifies that this annual increase applies. Similarly, if a plan incorporates by reference the annual adjustments to the limitations of section 415 pursuant to this paragraph (d)(3)(v), the annual increase under section 415(d) of the compensation-based limitation described in section 415(b)(1)(B) does not apply with respect to a participant for increases that are effective after the participant's severance from employment with the employer maintaining the plan (or, if earlier, after the annuity starting date in the case of a participant who has commenced receiving benefits), unless the plan specifies that this annual increase applies.

(D) *Treatment of cost-of-living adjustments for funding and deduction purposes.* In general, the annual increase under section 415(d) of the dollar limitation described in section 415(b)(1)(A) and the compensation limitation described in section 415(b)(1)(B) is treated as a plan amendment, regardless of whether the plan reflects the increase automatically through operation of plan provisions in accordance with this paragraph (d)(3)(v) or the plan is amended to reflect the increase (pursuant to § 1.415(d)–1(a)(5)). However, where a plan reflects the annual increase under section 415(d) of the dollar limitation described in section 415(b)(1)(A) or the compensation limitation described in section 415(b)(1)(B) automatically through operation of plan provisions pursuant to this paragraph (d)(3)(v), the funding method for the plan is permitted to provide for this annual increase to be treated as an experience loss for purposes of applying sections 404, 412, and 431.

(e) *Rules for plans maintained by more than one employer.* Except as provided in § 1.415(f)–1(g)(2)(i) (regarding aggregation of multiemployer plans with plans other than multiemployer plans), for purposes of applying the limitations of section 415 with respect to a participant in a plan maintained by more than one employer, benefits and contributions attributable to such participant from all of the employers maintaining the plan must be taken into account. Furthermore, in applying the limitations of section 415 with respect to a participant in such a plan, the total compensation received by the participant from all of the employers maintaining the plan is taken into account under the plan, unless the plan specifies otherwise.

(f) *Special rules*—(1) *Affiliated employers.* Pursuant to section 414(b) and § 1.414(b)–1, all employees of all

corporations that are members of a controlled group of corporations (within the meaning of section 1563(a), as modified by section 1563(f)(5), and determined without regard to section 1563(a)(4) and (e)(3)(C)) are treated as employed by a single employer for purposes of section 415. Similarly, pursuant to section 414(c) and regulations promulgated under section 414(c), all employees of trades or businesses that are under common control are treated as employed by a single employer. Thus, any defined benefit plan or defined contribution plan maintained by any member of a controlled group of corporations (within the meaning of section 414(b)) or by any trade or business (whether or not incorporated) that is part of a group of trades or businesses that are under common control (within the meaning of section 414(c)) is deemed maintained by all such members or such trades or businesses. Pursuant to section 415(h), for purposes of section 415, sections 414(b) and 414(c) are applied by using the phrase “more than 50 percent” instead of the phrase “at least 80 percent” each place the latter phrase appears in section 1563(a)(1) and in the regulations under section 414(c) (except for purposes of determining whether two or more organizations are a brother-sister group of trades or businesses under common control under the rules in § 1.414(c)–2(c)).

(2) *Affiliated service groups.* Any defined benefit plan or defined contribution plan maintained by any member of an affiliated service group (within the meaning of section 414(m)) is deemed maintained by all members of that affiliated service group.

(3) *Leased employees*—(i) *In general.* Pursuant to section 414(n), except as provided in paragraph (f)(3)(ii) of this section, with respect to any person (referred to as the recipient) for whom a leased employee (within the meaning of section 414(n)(2)) performs services, the leased employee is treated as an employee of the recipient, but contributions or benefits provided by the leasing organization that are attributable to services performed for the recipient are treated as provided under a plan maintained by the recipient.

(ii) *Exception for leased employees covered by safe harbor plans.* Pursuant to section 414(n)(5), the rule of paragraph (f)(3)(i) of this section does not apply to a leased employee with respect to services performed for a recipient if—

(A) The leased employee is covered by a plan that is maintained by the leasing organization and that meets the

requirements of section 414(n)(5)(B); and

(B) Leased employees (determined without regard to this paragraph (f)(3)(ii)) do not constitute more than 20 percent of the recipient's nonhighly compensated workforce.

(4) *Permissive service credit under governmental plans.* See section 415(n) for rules regarding the application of the limitations of sections 415(b) and (c) where a participant makes contributions (including a transfer described in section 403(b)(13) or section 457(e)(17)) to a defined benefit governmental plan to purchase permissive service credit under the plan.

(5) *Definition of severance from employment—(i) General rule.* For purposes of this section and §§ 1.415(b)-1, 1.415(b)-2, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1, and 1.415(j)-1, whether an employee has a severance from employment with the employer that maintains a plan is determined in the same manner as under § 1.401(k)-1(d)(2) except that, for purposes of determining the employer of an employee, the modifications provided under section 415(h) (described in paragraph (f)(1) of this section) to the employer aggregation rules apply. Thus, an employee has a severance from employment when the employee ceases to be an employee of the employer maintaining the plan, and an employee does not have a severance from employment if, in connection with a change of employment, the employee's new employer maintains such plan with respect to the employee. The determination of whether an employee ceases to be an employee of the employer maintaining the plan is based on all of the relevant facts and circumstances.

(ii) *Multiemployer plans.* A participant in a multiemployer plan (within the meaning of section 414(f)) is not treated as having incurred a severance from employment with the employer maintaining the multiemployer plan for purposes of this section and §§ 1.415(b)-1, 1.415(b)-2, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1, and 1.415(j)-1 if the participant continues to be an employee of another employer maintaining the multiemployer plan.

(6) *Qualified domestic relations orders.* A benefit provided to an alternate payee (as defined in section 414(p)(8)) of a participant pursuant to a qualified domestic relations order (as defined in section 414(p)(1)(A)) is treated as if it were provided to the participant for purposes of applying the limitations of section 415. See § 1.401(a)-13(g)(4)(iv).

(7) *Effect on other requirements.* Except as provided in § 1.417(e)-1(d)(1), the application of section 415 does not relieve a plan from the obligation to satisfy other applicable qualification requirements. Accordingly, the terms of the plan must provide for the plan to satisfy section 415 as well as all other applicable requirements. For example, if a defined benefit plan has a normal retirement age of 62, and if a participant's benefit remains unchanged between the ages of 62 and 65 because of the application of the section 415(b)(1)(A) dollar limit, the plan satisfies the requirements of section 411 only if the plan either commences distribution of the participant's benefit at normal retirement age (without regard to severance from employment) or provides for a suspension of benefits at normal retirement age that satisfies the requirements of section 411(a)(3)(B) and 29 CFR 2530.203-3. Similarly, if the increase to a participant's benefit under a defined benefit plan in a year after the participant has attained normal retirement age is less than the actuarial increase to the participant's previously accrued benefit because of the application of the section 415(b)(1)(B) compensation limitation (which is not adjusted for commencement after age 65), the plan satisfies the requirements of section 411 only if the plan either commences distribution of the participant's benefit at normal retirement age (without regard to severance from employment) or provides for a suspension of benefits at normal retirement age that satisfies the requirements of section 411(a)(3)(B) and 29 CFR 2530.203-3.

(g) *Effective date—(1) General rule.* Except as otherwise provided, this section and §§ 1.415(b)-1, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1, and 1.415(j)-1 apply to limitation years beginning on or after July 1, 2007.

(2) *Governmental plans.* In the case of a governmental plan as defined in section 414(d), this section and §§ 1.415(b)-1, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1, and 1.415(j)-1 apply to limitation years that begin more than 90 days after the close of the first regular legislative session of the legislative body with authority to amend the plan that begins on or after July 1, 2007. A governmental plan is permitted to apply the provisions of this section and §§ 1.415(b)-1, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1, and 1.415(j)-1 to limitation years beginning on or after July 1, 2007, provided the plan applies all the applicable provisions of this section and §§ 1.415(b)-1, 1.415(c)-1, 1.415(c)-2,

1.415(d)-1, 1.415(f)-1, 1.415(g)-1, and 1.415(j)-1 for such limitation years.

(3) *Option to apply regulations earlier.* A plan may apply the rules in § 1.415(c)-2(e) regarding post-severance compensation payments for limitation years prior to the effective date described in paragraphs (g)(1) and (2) of this section. This early application affects the rules relating to the definition of compensation in § 1.401(k)-1(e)(8) and § 1.457-4(d).

(4) *Grandfather rule for preexisting benefits.* A defined benefit plan is considered to satisfy the limitations of section 415(b) for a participant with respect to benefits accrued or payable under the plan as of the end of the limitation year that is immediately prior to the effective date of final regulations under this section and §§ 1.415(b)-1, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1, and 1.415(j)-1 (as provided under paragraph (g)(1) or (2) of this section) pursuant to plan provisions (including plan provisions relating to the plan's limitation year) that were both adopted and in effect before April 5, 2007, but only if such plan provisions meet the applicable requirements of statutory provisions, regulations, and other published guidance relating to section 415 in effect immediately before the effective date of final regulations under this section and §§ 1.415(b)-1, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1, and 1.415(j)-1 (as provided under paragraph (g)(1) or (2) of this section). Plan provisions will not be treated as failing to satisfy these requirements merely because the plan has not been amended to reflect changes to section 415(b) made by the Pension Funding Equity Act of 2004, Public Law 108-218 (118 Stat. 596), and the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780). In addition, plan provisions will not be treated as failing to satisfy these requirements merely because the plan's definition of compensation for a limitation year that is used for purposes of applying the limitations of section 415(b)(1)(B) reflects compensation for a plan year that is in excess of the limitation under section 401(a)(17) that applies to that plan year. If benefits under a plan are accrued after the applicable effective date under paragraph (g)(1) or (2) of this section, then the sum of the benefits grandfathered under the first sentence of this paragraph (g)(4) and benefits accrued after the applicable effective date must satisfy the requirements of section 415, taking into account the requirements of this section and §§ 1.415(b)-1, 1.415(c)-1, 1.415(c)-2,

1.415(d)-1, 1.415(f)-1, 1.415(g)-1, and 1.415(j)-1.

■ **Par. 9.** Section 1.415(b)-1 is added to read as follows:

**§ 1.415(b)-1 Limitations for defined benefit plans.**

(a) *General rules*—(1) *Maximum limitations.* Except as otherwise provided under this section, a defined benefit plan fails to satisfy the requirements of section 415(a) for a limitation year if, during the limitation year, either the annual benefit (as defined in paragraph (b)(1)(i) of this section) accrued by a participant (whether or not the benefit is vested) or the annual benefit payable to a participant at any time under the plan exceeds the lesser of—

(i) \$160,000 (as adjusted pursuant to section 415(d), § 1.415(d)-1(a), and this section); or

(ii) 100 percent of the participant's average compensation for the period of the participant's high-3 years of service (as adjusted pursuant to section 415(d), § 1.415(d)-1(a), and this section).

(2) *Defined benefit plan.* For purposes of section 415 and regulations promulgated under section 415, a defined benefit plan is any plan, contract, or account to which section 415 applies pursuant to § 1.415(a)-1(a) or (b) (or any portion thereof) that is not a defined contribution plan within the meaning of § 1.415(c)-1(a)(2). In addition, a section 403(b) annuity contract that is not described in section 414(i) is treated as a defined benefit plan for purposes of section 415 and regulations promulgated under section 415.

(3) *Plan provisions.* As required in § 1.415(a)-1(d)(1), in order to satisfy the limitations on benefits under this section, the plan provisions (including the provisions of any annuity) must preclude the possibility that any annual benefit exceeding these limitations will be accrued (except as provided in paragraph (a)(7)(iii) of this section), distributed, or otherwise payable in any optional form of benefit (including the normal form of benefit) at any time (from the plan, from an annuity contract that will make distributions to the participant on behalf of the plan, or from an annuity contract that has been distributed under the plan). Thus, for example, a plan that is subject to the requirements of section 411 will fail to satisfy the limitations of this section if the plan does not contain terms that preclude the possibility that any annual benefit exceeding these limitations will be accrued or payable in any optional form of benefit (including the normal

form of benefit) at any time, even though no participant has actually accrued a benefit in excess of these limitations.

(4) *Adjustments to dollar limitation for commencement before age 62 or after age 65.* The age-adjusted section 415(b)(1)(A) dollar limit computed pursuant to paragraph (d) or (e) of this section is used in place of the dollar limitation described in section 415(b)(1)(A) and paragraph (a)(1)(i) of this section in the case of a benefit with an annuity starting date that occurs before the participant attains age 62 or after the participant attains age 65.

(5) *Average compensation for period of high-3 years of service*—(i) *In general.* Except as otherwise provided in this paragraph (a)(5), for purposes of applying the limitation on benefits described in this section, the period of a participant's high-3 years of service is the period of 3 consecutive calendar years (taking into account the rule in paragraph (a)(5)(iii) of this section) during which the employee had the greatest aggregate compensation (as defined in § 1.415(c)-2) from the employer, and the average compensation for the period of a participant's high-3 years of service is determined by dividing the aggregate compensation for this period by 3. For purposes of this paragraph (a)(5), in determining a participant's high-3 years of service, the plan may use any 12-month period to determine a year of service instead of the calendar year, provided that it is uniformly and consistently applied in a manner that is specified under the terms of the plan. As provided under § 1.415(c)-2(f), because a plan is not permitted to base benefits on compensation in excess of the limitation under section 401(a)(17), a plan's definition of compensation for a year that is used for purposes of applying the limitations of section 415 is not permitted to reflect compensation for a year that is in excess of the limitation under section 401(a)(17) that applies to that year. See §§ 1.401(a)(17)-1(a)(3)(i) and 1.401(a)(17)-1(b)(3)(ii) for rules regarding the effective date of increases in the section 401(a)(17) compensation limitation for a plan year and for a 12-month period other than the plan year.

(ii) *Short periods of service.* For a participant who is employed with an employer for less than 3 consecutive years, the period of the participant's high-3 years of service is the actual number of consecutive years of service (including fractions of years, but not less than one year). In such a case, the limitation of section 415(b)(1)(B) of 100 percent of the participant's average

compensation for the period of the participant's high-3 years of service is computed by dividing the participant's compensation during the participant's longest consecutive period of service by the number of years in that period (including fractions of years, but not less than one year). The rule in paragraph (a)(5)(iii) of this section is used for purposes of determining a participant's consecutive years of service.

(iii) *Break in service.* In the case of a participant who has had a severance from employment with an employer that maintains the plan and who is subsequently rehired by the employer, the period of the participant's high-3 years of service is calculated by excluding all years for which the participant performs no services for and receives no compensation from the employer maintaining the plan (referred to as the break period), and by treating the year of service immediately prior to and the year of service immediately after the break period as if such years of service were consecutive. See § 1.415(d)-1(a)(2)(iii) for a special rule for determining a rehired participant's section 415(b)(1)(B) compensation limit in the case of a plan that adjusts the compensation limit for limitation years after the limitation year in which the participant incurs a severance from employment.

(iv) *Examples.* For purposes of these examples, except as otherwise stated, the plan year and the limitation year are the calendar year, and the plan uses the calendar year for purposes of determining the period of high-3 years of service. In addition, except as otherwise stated, it is assumed that the plan's normal retirement age is 65, and all participants discussed in these examples have at least ten years of service with the employer and at least ten years of participation in the plan at issue. It is also assumed that none of the plans in the examples are governmental plans. The following examples illustrate the rules of this paragraph (a)(5):

*Example 1.* (i) *Facts.* Plan A, which was established on January 1, 2008, covers Participant M, who was hired on January 1, 1990. Participant M's compensation (as defined in § 1.415(c)-2) from the employer maintaining the plan is \$140,000 each year for 1990 through 1992, is \$120,000 each year for 1993 through 2007, and is \$165,000 for 2008 and 2009. Assume that for Plan A's 2008 and 2009 limitation years, the section 415(b)(1)(A) age-adjusted dollar limit for M is \$185,000 and \$190,000, respectively, prior to the reduction of the age-adjusted dollar limit pursuant to paragraph (g)(1) of this section (which requires a reduction in the dollar limit if a participant has less than 10 years of participation in the plan).

(ii) *Conclusion.* As of the end of the 2008 limitation year, the period of M's high-3 consecutive years of service runs from January 1, 1990, through December 31, 1992, and M's average compensation for this period is \$140,000. Thus, the limitation under section 415(b)(1)(B) for the 2008 limitation year is \$140,000. As of the end of the 2009 limitation year, the period of M's high-3 consecutive years of service runs from January 1, 2007, through December 31, 2009, and M's average compensation for this period is \$150,000. Thus, the limitation under section 415(b)(1)(B) for the 2009 limitation year is \$150,000.

*Example 2 (i) Facts.* Participant N is a participant in Plan B. N's compensation for 2008, 2009, and 2010 is \$300,000 for each year. N's average compensation for the period of N's high-3 years of service (determined before the application of section 401(a)(17)) is \$300,000, based on N's compensation for 2008, 2009, and 2010. For all years before 2008, Participant N's compensation was less than the then-applicable section 401(a)(17) limit. On January 1, 2011, N commences receiving benefits from Plan B at the age of 75, 10 years after attaining N's normal retirement age under Plan B, when the age-adjusted section 415(b)(1)(A) dollar limit for benefits commencing at that age is \$293,453.

(ii) *Conclusion.* Pursuant to § 1.415(c)-2(f) and section 401(a)(17), Plan B is not permitted to provide for a definition of compensation that includes compensation for a year that is in excess of the limitation under section 401(a)(17) that applies to that year. Accordingly, the limitation under section 415(b)(1)(B) based on N's average compensation for the period of N's high three years of service must not reflect compensation for a year that is in excess of the limitation under section 401(a)(17) that applies to that year. Thus, if the limitation under section 401(a)(17) for years beginning in 2008, 2009, and 2010 is \$230,000, \$235,000, and \$240,000, respectively, then the limitation under section 415(b)(1)(B) based on N's average compensation for the period of N's high three years of service is \$235,000.

*Example 3. (i) Facts.* The facts are the same as in *Example 2*, except that N commences receiving benefits from Plan B on January 1, 2008, at the age of 75, 10 years after attaining N's normal retirement age under Plan B. In addition, N's period of high three years of service is from January 1, 2003, through December 31, 2005, and N's average compensation for this period is \$300,000. The section 401(a)(17) limits for 2003, 2004 and 2005 are \$200,000, \$205,000, and \$210,000, respectively. As of December 31, 2007, pursuant to plan provisions adopted and in effect on January 1, 2007, N's accrued benefit under Plan B, payable in the form of a straight life annuity, actuarially adjusted to reflect commencement 10 years after normal retirement age, is \$300,000. Plan B has not been amended during 2007, and that as of December 31, 2007, Plan B satisfied all of the requirements of section 415(b) with respect to N's accrued benefit, pursuant to statutory provisions, regulations, and other published guidance in effect immediately before the limitation year beginning on January 1, 2008.

(ii) *Conclusion.* Under § 1.415(a)-1(g)(4), Plan B is considered to satisfy the section 415(b)(1)(B) compensation limit with respect to N's benefit payable at age 75 of \$300,000 (which N accrued prior to January 1, 2008), for limitation years beginning after December 31, 2007. This is because § 1.415(a)-1(g)(4) provides that plan provisions will not be treated as failing to satisfy the requirements of section 415(b)(1)(B) merely because the plan's definition of compensation that is used for purposes of applying the limitations of section 415(b)(1)(B) reflects compensation in excess of the section 401(a)(17) limitation for limitation years beginning before January 1, 2008. N, however, cannot accrue any additional benefits under Plan B for limitation years beginning after December 31, 2007, until N's section 415(b)(1)(B) compensation limit, as limited by § 1.415(c)-2(f) and section 401(a)(17), increases above \$300,000.

*Example 4. (i) Facts.* Participant O participates in Plan C, maintained by Employer X. Plan C does not adjust a participant's section 415(b)(1)(B) compensation limit for limitation years after the limitation year in which the participant incurs a severance from employment. Prior to separating from employment with X in 2010, O's average compensation for O's period of high-3 years of service is \$50,000, based on O's compensation for 2007, 2008, and 2009, which was \$50,000 for each year. O's compensation for 2010 was \$45,000. O's compensation is \$0 for 2011. In 2012, O is rehired by X and resumes participation in Plan C. O's compensation in 2012 is \$45,000, and is \$70,000 in 2013.

(ii) *Conclusion.* As of the end of the 2013 limitation year, O's average compensation for O's period of high-3 years of service is \$53,333, based on O's compensation in 2010, 2012, and 2013. See paragraph (a)(5)(iii) of this section.

*Example 5. (i) Facts.* The facts are the same as in *Example 4*, except that, in accordance with § 1.415(a)-1(d)(3)(v), Plan C incorporates by reference section 415(d) adjustments to a participant's section 415(b)(1)(B) compensation limit for limitation years after the limitation year in which the participant incurs a severance from employment. Assume that the annual adjustment factor described in § 1.415(d)-1(a)(2)(ii) for 2011 through 2013 is 1.03 for each year. Thus, disregarding O's rehire by X, O's average compensation for O's period of high-3 years of service for the 2013 limitation year is equal to \$54,636 ( $\$50,000 * 1.03 * 1.03 * 1.03$ ).

(ii) *Conclusion.* Under § 1.415(d)-1(a)(2)(iii), O's average compensation for O's period of high-3 years of service for the 2013 limitation year is \$54,636.

(6) *Exceptions from compensation limit.* The limit under paragraph (a)(1)(ii) of this section (100 percent of the participant's average compensation for the participant's high-3 years of service) does not apply to—

(i) A governmental plan (as defined in section 414(d));

(ii) A multiemployer plan (as defined in section 414(f));

(iii) A collectively bargained plan that is described in section 415(b)(7); or

(iv) A participant in a plan maintained by an organization described in section 3121(w)(3)(A) who has never been a highly compensated employee (within the meaning of section 414(q)) of the organization.

(7) *Special rules—(i) Total benefits not in excess of \$10,000.* See section 415(b)(4) and paragraph (f) of this section for an exception from the limits of section 415(b)(1) and paragraph (a)(1) of this section with respect to retirement benefits that do not exceed \$10,000 for the limitation year.

(ii) *Governmental plans electing during 1990.* For a special limitation applicable to certain governmental plans electing the application of this rule during the first plan year beginning after December 31, 1989, see section 415(b)(10).

(iii) *Defined benefit plans not subject to the requirements of section 411.* In the case of a defined benefit plan that is not subject to the requirements of section 411, the limitations described in this paragraph (a) are not required to be applied to the annual benefit accrued by a participant before the benefit is payable. However, such a defined benefit plan is subject to the limitations described in this paragraph (a) with respect to the annual benefit payable to a participant at any time under the plan.

(iv) *Application of compensation limitation exception to a church employee who becomes a highly compensated employee—(A) In general.* If a participant who was described in paragraph (a)(6)(iv) of this section for a prior limitation year later becomes a highly compensated employee (within the meaning of section 414(q)) of the organization that maintains the defined benefit plan, the plan is not treated as failing to satisfy the compensation-based limitation described in paragraph (a)(1)(ii) of this section with respect to the participant if the requirements of paragraph (a)(7)(iv)(B) of this section are satisfied with respect to the participant.

(B) *Limitation on accruals.* The requirements of this paragraph (a)(7)(iv)(B) are satisfied with respect to a participant if no plan amendments increasing the participant's benefits are adopted during the limitation year in which the participant first becomes a highly compensated employee (within the meaning of section 414(q)) of the organization that maintains the plan, and there is no increase in the participant's accrued benefit derived from employer contributions (including increases as a result of increased compensation or service) in subsequent limitation years.

(b) *Annual benefit*—(1) *In general*—(i) *Definition of annual benefit*—(A) *Straight life annuities.* For purposes of this section and § 1.415(b)–2, the term *annual benefit* means a benefit that is payable in the form of a straight life annuity. A *straight life annuity* means an annuity payable in equal installments for the life of the participant that terminates upon the participant's death. Examples of benefits that are not in the form of a straight life annuity include an annuity with a post-retirement death benefit and an annuity providing a guaranteed number of payments. If a benefit is payable in the form of a straight life annuity, no adjustment is made to the benefit to account for differences in the timing of payments during a year (for example, no adjustment is made on account of the annuity being payable in annual or monthly installments).

(B) *Other benefit forms.* With respect to a benefit payable in a form other than a straight life annuity, the annual benefit is determined as the straight life annuity payable on the first day of each month that is actuarially equivalent to the benefit payable in such other form, determined under the rules of paragraph (c) of this section.

(ii) *Rules for determination of annual benefit.* The annual benefit does not include the annual benefit attributable to either employee contributions or rollover contributions (as described in sections 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)), determined pursuant to the rules of paragraph (b)(2) of this section. The treatment of transferred benefits is determined under the rules of paragraph (b)(3) of this section. Paragraph (b)(4) of this section discusses the treatment of qualified governmental excess benefit arrangements.

(iii) *Determination of annual benefit in the case of multiple annuity starting dates*—(A) *General rule.* If a participant has or will have distributions commencing at more than one annuity starting date, then the limitations of section 415 must be satisfied as of each of the annuity starting dates, taking into account the benefits that have been or will be provided at all of the annuity starting dates. This will happen, for example, where benefit distributions to a participant have previously commenced under a plan that is aggregated for purposes of section 415 with a plan under which the participant receives current accruals. In determining the annual benefit for such a participant as of a particular annuity starting date, the plan must actuarially adjust the past and future distributions with respect to the benefits that

commenced at the other annuity starting dates. For limitation years to which § 1.415(b)–2 applies, these adjustments must be made using the rules of § 1.415(b)–2. For purposes of this paragraph (b)(1)(iii) and § 1.415(b)–2, the determination of whether a new annuity starting date has occurred is made without regard to the rule of § 1.401(a)–20, Q&A–10(d) (under which the commencement of certain distributions may not give rise to a new annuity starting date).

(B) *Scope of multiple annuity starting date rules.* The rules provided in this paragraph (b)(1)(iii) and § 1.415(b)–2 apply for purposes of determining the annual benefit of a participant where a new distribution election is effective during the current limitation year with respect to a distribution that previously commenced. The rules of this paragraph (b)(1)(iii) and § 1.415(b)–2 also apply for determining the annual benefit of a participant for purposes of applying the limitations of section 415(b) and this section where benefit payments are increased as a result of plan terms or a plan amendment applying a cost-of-living adjustment or similar benefit increase, unless the increase is described in paragraph (b)(1)(iii)(C) of this section.

(C) *Safe harbors for certain benefit increases.* An increase to benefit payments as a result of plan terms or a plan amendment applying a cost-of-living adjustment or similar benefit increase is described in this paragraph (b)(1)(iii)(C) if the increase—

(1) Has previously been accounted for as part of the annual benefit under the rules of paragraph (c) of this section;

(2) Is not required to be accounted for as part of the annual benefit, pursuant to the exception for certain automatic benefit increase features under paragraph (c)(5) of this section;

(3) Is pursuant to a plan provision that automatically incorporates section 415(d) cost-of-living adjustments under § 1.415(a)–1(d)(3)(v); or

(4) Complies with one of the safe harbors described in § 1.415(d)–1(a)(5) or (6) (providing safe harbors for annual and other periodic adjustments to distributions).

(2) *Determination of annual benefit attributable to employee contributions and rollover contributions*—(i) *In general.* If employee contributions (other than contributions described in paragraph (b)(2)(ii) of this section) or rollover contributions are made to the plan, the annual benefit attributable to these contributions is determined as provided in this paragraph (b)(2).

(ii) *Certain employee contributions disregarded.* For purposes of this

paragraph (b)(2), the following are not treated as employee contributions:

(A) Contributions that are picked up by a governmental employer as provided under section 414(h)(2).

(B) Repayment of any loan made to a participant from the plan.

(C) Repayment of a previously distributed amount as described in section 411(a)(7)(B) in accordance with section 411(a)(7)(C).

(D) Repayment of a withdrawal of employee contributions as provided under section 411(a)(3)(D).

(E) Repayments that would have been described in paragraph (b)(2)(ii)(C) or (b)(2)(ii)(D) of this section except that the plan does not restrict the timing of repayments to the maximum extent permitted by section 411(a).

(iii) *Annual benefit attributable to mandatory employee contributions.* In the case of mandatory employee contributions as defined in section 411(c)(2)(C) and § 1.411(c)–1(c)(4) (or contributions that would be mandatory employee contributions if section 411 applied to the plan), the annual benefit attributable to those contributions is determined by applying the factors applicable to mandatory employee contributions as described in section 411(c)(2)(B) and (C) and regulations promulgated under section 411 to those contributions to determine the amount of a straight life annuity commencing at the annuity starting date, regardless of whether the requirements of sections 411 and 417 apply to that plan. For purposes of applying such factors to a plan that is not subject to the requirements of section 411, the applicable effective date of section 411(a)(2) (which is used under § 1.411(c)–1(c)(3) to determine the beginning date from which statutorily specified interest must be credited to mandatory employee contributions) must be determined as if section 411 applied to the plan, and in determining the annual benefit that is actuarially equivalent to these accumulated contributions, the plan must determine the interest rate that would have been required under section 417(e)(3) as if section 417 applied to the plan. See § 1.415(c)–1(a)(2)(ii)(B) and (b)(3) for rules regarding treatment of mandatory employee contributions to a defined benefit plan as annual additions under a defined contribution plan.

(iv) *Voluntary employee contributions.* If voluntary employee contributions are made to the plan, the portion of the plan to which voluntary employee contributions are made is treated as a defined contribution plan pursuant to section 414(k) and, accordingly, is a defined contribution

plan pursuant to § 1.415(c)-1(a)(2)(i). Accordingly, the portion of a plan to which voluntary employee contributions are made is not a defined benefit plan within the meaning of paragraph (a)(2) of this section and is not taken into account in determining the annual benefit under the portion of the plan that is a defined benefit plan.

(v) *Annual benefit attributable to rollover contributions.* The annual benefit attributable to rollover contributions from an eligible retirement plan, as defined in section 402(c)(8)(B) (for example, a contribution received pursuant to a direct rollover under section 401(a)(31)(A)), is determined in the same manner as the annual benefit attributable to mandatory employee contributions if the plan provides for a benefit derived from the rollover contribution (other than a benefit derived from a separate account to be maintained with respect to the rollover contribution and actual earnings and losses thereon). Thus, in the case of rollover contributions from a defined contribution plan to a defined benefit plan to provide an annuity distribution, the annual benefit attributable to those rollover contributions for purposes of section 415(b) is determined by applying the rules of section 411(c) as described in paragraph (b)(2)(iii) of this section, regardless of the assumptions used to compute the annuity distribution under the plan and regardless of whether the plan is subject to the requirements of sections 411 and 417. Accordingly, in such a case, if the plan uses more favorable factors than those specified in section 411(c) to determine the amount of annuity payments arising from rollover contributions, the annual benefit under the plan would reflect the excess of those annuity payments over the amounts that would be payable using the factors specified in section 411(c). See § 1.415(c)-1(b)(3)(i) for rules excluding rollover contributions maintained in a separate account that is treated as a defined contribution plan pursuant to section 414(k) from annual additions to a defined contribution plan.

(3) *Treatment of transferred benefits—*  
(i) *In general—*(A) *Treatment of transferor plan if transferred benefits are aggregated with transferor plan.* Except as provided in paragraph (b)(3)(ii) of this section, when there has been a transfer of benefits from one defined benefit plan to another plan, to the extent the benefits transferred to the transferee plan are otherwise required to be taken into account pursuant to section 415(f) and § 1.415(f)-1 in determining whether the transferor plan satisfies the limitations of section 415(b)

for a limitation year, the transferred benefits are not treated as being provided under the transferor plan. This will occur, for example, if the employer sponsoring the transferor plan and the employer sponsoring the transferee plan are in the same controlled group within the meaning of section 414(b).

(B) *Treatment of transferor plan if transferred benefits are not aggregated with transferor plan.* Except as provided in paragraph (b)(3)(ii) of this section, when there has been a transfer of benefits from one defined benefit plan to another plan, to the extent the benefits transferred to the transferee plan are not otherwise required to be taken into account pursuant to section 415(f) and § 1.415(f)-1 in determining whether the transferor plan satisfies the limitations of section 415(b) for a limitation year, the transferred benefits are treated by the transferor plan as if such benefits were provided under annuities purchased to provide benefits under a plan that must be aggregated with the transferor plan and that terminated immediately prior to the transfer with sufficient assets to pay all benefit liabilities under the plan, in accordance with the rules of paragraph (b)(5)(i) of this section. This will occur, for example, in the case of a transfer of benefits between defined benefit plans maintained by employers that are not required to be aggregated under sections 414(b) and (c) (as modified by section 415(h)) or sections 414(m).

(C) *Treatment of transferee plan.* Except as provided in paragraph (b)(3)(ii) of this section, where there has been a transfer of benefits from one defined benefit plan to another defined benefit plan, the transferee plan must take into account the transferred benefits in determining whether it satisfies the limitations of section 415(b).

(ii) *Elective transfer of distributable benefit.* Where, as described in § 1.411(d)-4, Q&A-3(c) (permitting certain elective transfers of distributable benefits), a distributable benefit is transferred to a defined contribution plan from either a defined contribution plan or a defined benefit plan, the amount transferred is treated as a benefit paid from the transferor plan, and the annual benefit provided by the transferee defined benefit plan does not include the annual benefit attributable to the amount transferred (determined as if the transferred amount were a rollover contribution subject to the rules of paragraph (b)(2)(v) of this section). The rule in the preceding sentence applies regardless of whether the requirements of section 411 apply to the plan and, in the case of a transfer from a defined

contribution plan that is not subject to the requirements of section 411 (such as a governmental plan) to a defined benefit plan, the rule applies even if the participant's benefits are not distributable from the defined contribution plan at the time of the transfer.

(4) *Treatment of qualified governmental excess benefit arrangements.* Pursuant to section 415(m), in determining whether a governmental plan (as defined in section 414(d)) meets the requirements of this section, the annual benefit does not include benefits provided under a qualified governmental excess benefit arrangement, as defined in section 415(m)(3). Thus, the limitation of section 415(b) does not apply to benefits to the extent the benefits are provided under a qualified governmental excess benefit arrangement.

(5) *Treatment of benefits provided under a terminated plan—*(i) *Terminated plan with sufficient assets.* If a defined benefit plan is terminated with sufficient assets for the payment of the benefit liabilities of all plan participants and a participant in the plan has not yet commenced benefits under the plan, for purposes of satisfying section 415(b) with respect to the participant, all other defined benefit plans maintained by the employer that maintained the terminated plan are required to take into account the benefits provided pursuant to the annuities purchased to provide benefits under the terminated plan at each possible annuity starting date. In such a case, see paragraph (b)(1)(iii) of this section for rules regarding the determination of a participant's annual benefit if the participant commences receiving benefits under the terminated plan.

(ii) *Terminated plan with insufficient assets.* If a defined benefit plan is terminated and there are not sufficient assets for the payment of the benefit liabilities of all plan participants, for purposes of satisfying section 415(b) with respect to a participant, all other defined benefit plans maintained by the employer that maintained the terminated plan are required to take into account the benefits that are actually provided to the participant under the terminated plan. For example, in the case of a plan that is subject to Title IV of the Employee Retirement Income Security Act of 1974 (88 Stat. 829), Public Law 93-406 (ERISA), and that terminates with insufficient assets for the payment of the benefit liabilities of all plan participants, all other defined benefit plans maintained by the employer that maintained the

terminating plan must take into account benefits that are paid by the Pension Benefit Guaranty Corporation. In such a case, see paragraph (b)(1)(iii) of this section for rules regarding the determination of a participant's annual benefit if the participant commences receiving benefits under the terminated plan.

(iii) *Other guidance.* The Commissioner may provide guidance regarding the rules applicable to terminated plans (and plans that are deemed to have been terminated pursuant to paragraph (b)(3)(i)(B) of this section) in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

(c) *Adjustment to form of benefit for forms other than a straight life annuity—(1) In general.* This paragraph (c) provides rules for adjusting a form of benefit other than a straight life annuity to an actuarially equivalent straight life annuity beginning at the same time for purposes of determining the annual benefit described in paragraph (b) of this section. Paragraph (c)(2) of this section describes how to adjust a benefit paid in a form to which section 417(e)(3) does not apply. Paragraph (c)(3) of this section describes how to adjust a benefit paid in a form to which section 417(e)(3) applies. Paragraph (c)(4) of this section describes benefit forms for which no adjustment is required. Paragraph (c)(5) of this section provides an exception from the requirements of this paragraph (c) with respect to certain automatic benefit increase features. Paragraph (c)(6) of this section sets forth examples illustrating the application of this paragraph (c). The Commissioner may, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin set forth simplified methods for adjusting a form of benefit other than a straight life annuity to an actuarially equivalent straight life annuity beginning at the same time for purposes of determining the annual benefit described in paragraph (b) of this section. See § 601.601(d)(2) of this chapter.

(2) *Benefits paid in a form to which section 417(e)(3) does not apply.* For a benefit paid in a form to which section 417(e)(3) does not apply, the actuarially equivalent straight life annuity benefit is the greater of—

(i) The annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the form of benefit payable to the participant; or

(ii) The annual amount of the straight life annuity commencing at the same

annuity starting date that has the same actuarial present value as the form of benefit payable to the participant, computed using a 5 percent interest assumption and the applicable mortality table described in § 1.417(e)–1(d)(2) for that annuity starting date.

(3) *Benefits paid in a form to which section 417(e)(3) applies—(i) In general.* Except as otherwise provided in this paragraph (c)(3), for a benefit paid in a form to which section 417(e)(3) applies, the actuarially equivalent straight life annuity benefit is the greater of:—

(A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial equivalence;

(B) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption and the applicable mortality table for the distribution under § 1.417(e)–1(d)(2); or

(C) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under § 1.417(e)–1(d)(3) and the applicable mortality table for the distribution under § 1.417(e)–1(d)(2)), divided by 1.05.

(ii) *Special rule for distributions in plan years beginning in 2004 and 2005.* For a distribution to which section 417(e)(3) applies and which has an annuity starting date occurring in plan years beginning in 2004 or 2005, except as provided in section 101(d)(3) of the Pension Funding Equity Act of 2004, Public Law 108–218 (118 Stat. 596), the actuarially equivalent straight life annuity benefit is the greater of—

(A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial equivalence; or

(B) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption and the applicable mortality table for the distribution under § 1.417(e)–1(d)(2).

(4) *Certain benefit forms for which no adjustment is required—(i) In general.*

For purposes of the adjustments described in this paragraph (c), the following benefits are not taken into account:

(A) Survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity (as defined in section 417(b)) to the extent that such benefits would not be payable if the participant's benefit were not paid in the form of a qualified joint and survivor annuity.

(B) Ancillary benefits that are not directly related to retirement benefits, such as preretirement disability benefits not in excess of the qualified disability benefit, preretirement incidental death benefits (including a qualified preretirement survivor annuity), and post-retirement medical benefits.

(ii) *Rules of application—(A) Social security supplements.* Although a social security supplement described in section 411(a)(9) and § 1.411(a)–7(c)(4) may be an ancillary benefit, it is included in determining the annual benefit because it is payable upon retirement and therefore is directly related to retirement income benefits.

(B) *Qualified joint and survivor annuities combined with other distributions.* If benefits are paid partly in the form of a qualified joint and survivor annuity (QJSA) and partly in some other form (such as a single-sum distribution), the rule of paragraph (c)(4)(i)(A) of this section (under which survivor benefits are not included in determining the annual benefit) applies to the survivor annuity payments under the portion of the benefit that is paid in the form of a QJSA.

(5) *Exception for certain automatic benefit increase features—(i) General rule.* Notwithstanding paragraph (b)(1)(i)(B) of this section, no adjustment is required to a benefit that is paid in a form that is not a straight life annuity to take into account the inclusion in that form of an automatic benefit increase feature, as described in paragraph (c)(5)(ii) of this section, if:

(A) The benefit is paid in form to which section 417(e)(3) does not apply.

(B) The plan satisfies the requirements of paragraph (c)(5)(iii) of this section.

(ii) *Definition of automatic benefit increase feature.* An automatic benefit increase feature is included in a form of benefit if that form provides for automatic, periodic increases to the benefits paid in that form, such as a form of benefit that automatically increases the benefit paid under that form annually according to a specified percentage or objective index, or a form of benefit that automatically increases the benefit paid in that form to share

favorable investment returns on plan assets.

(iii) *Requirements.* A plan satisfies the requirements of this paragraph (c)(5)(iii) with respect to a form of benefit that includes an automatic benefit increase feature if the form of benefit without regard to the automatic benefit increase feature satisfies the requirements of section 415(b) and this section, and the plan provides that in no event will the amount payable to the participant under the form of benefit in any limitation year be greater than the section 415(b) limit applicable at the annuity starting date (which is the lesser of the age-adjusted section 415(b)(1)(A) dollar limit described in paragraph (a)(1)(i) of this section or the section 415(b)(1)(B) compensation limit described in paragraph (a)(1)(ii) of this section), as increased in subsequent years pursuant to section 415(d) and § 1.415(d)-1. If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity, then the preceding sentence is applied by reducing the section 415(b) limit applicable at the annuity starting date to an actuarially equivalent amount (determined using the assumptions specified in paragraph (c)(2)(ii) of this section) that takes into account the death benefits under the form of benefit (other than the survivor portion of a QJSA).

(6) *Examples.* The following examples illustrate the provisions of this paragraph (c). For purposes of these examples, except as otherwise stated, actuarial equivalence under the plan is determined using a 5 percent interest assumption and the mortality table that applies under section 417(e)(3) as of January 1, 2003. It is assumed for purposes of these examples that the interest rate that applies under section 417(e)(3) and § 1.417(e)-1(d)(3) for relevant time periods is 5.25 percent and that the mortality table that applies under section 417(e)(3) and § 1.417(e)-1(d)(2) for relevant time periods is the mortality table that applies under section 417(e)(3) as of January 1, 2003. In addition, it is assumed that all participants discussed in these examples have at least ten years of service with the employer and at least ten years of participation in the plan at issue, all payments other than a payment of a single sum are made monthly, on the first day of each calendar month, and each plan's normal retirement age is 65. The examples are as follows:

*Example 1. (i) Facts.* Plan A provides a single-sum distribution determined as the actuarial present value of the straight life annuity payable at the actual retirement date.

Plan A provides that a participant's single sum is determined as the greater of the present value determined using the otherwise applicable actuarial assumptions of the plan and the present value determined using the applicable interest rate and the applicable mortality table for the distribution under section 417(e)(3). In accordance with § 1.417(e)-1(d)(1), Plan A also provides that the single sum is not less than the actuarial present value of the accrued benefit payable at normal retirement age, determined using the applicable interest rate and the applicable mortality table under section 417(e)(3) and § 1.417(e)-1(d). Participant M retires at age 65 with a benefit under the plan formula (and before the application of section 415) of \$152,619 and elects to receive a distribution in the form of a single sum. Under the plan and before the application of section 415, the amount of the single sum is \$1,800,002 (which is based on the 5 percent interest rate and applicable mortality table as of January 1, 2003, since that present value is greater than the present value that would have been determined using the applicable interest rate (5.25 percent) and the applicable mortality table (the January 1, 2003, table) for the distribution under section 417(e)(3)).

(ii) *Conclusion.* For purposes of this section, the annual benefit is the greatest of the annual amount of the actuarially equivalent straight life annuity commencing at the same age (determined using the plan's actuarial factors), the annual amount of the actuarially equivalent straight life annuity commencing at the same age (determined using a 5.5 percent interest assumption and the applicable mortality table for the distribution under § 1.417(e)-1(d)(2)), and the annual amount of the actuarially equivalent straight life annuity commencing at the same age (determined using the applicable interest rate and applicable mortality table for the distribution under §§ 1.417(e)-1(d)(2) and (d)(3) divided by 1.05. Based on the factors used in the plan to determine the actuarially equivalent lump sum (in this case, an interest rate of 5 percent and the applicable mortality table as of January 1, 2003), \$1,800,002 payable as a single sum is actuarially equivalent to an immediate straight life annuity at age 65 of \$152,619. A single sum payment of \$1,800,002 is actuarially equivalent to an immediate straight life annuity at age 65 of \$159,105, using a 5.5 percent interest assumption and the applicable mortality table under § 1.417(e)-1(d)(2). Based on the applicable interest rate and the applicable mortality table for the distribution under §§ 1.417(e)-1(d)(2) and (d)(3), \$1,800,002 payable as a single sum is actuarially equivalent to an immediate straight life annuity at age 65 of \$155,853. \$148,432 is the result when this annual amount is divided by 1.05. With respect to the single-sum distribution, M's annual benefit for purposes of section 415(b) is equal to the greatest of the three resulting amounts (\$152,619, \$159,105, and \$148,432), or \$159,105.

*Example 2. (i) Facts.* The facts are the same as in *Example 1*, except that Participant M elects to receive his benefit in the form of a 10-year certain and life annuity. Applying the plan's actuarial equivalence factors, the benefit payable in this form is \$146,100.

(ii) *Conclusion.* Since the form of benefit elected by M is a form of benefit to which section 417(e)(3) does not apply, the annual benefit for purposes of this section is the greater of the annual amount of the plan's straight life annuity commencing at the same age or the annual amount of the actuarially equivalent straight life annuity commencing at the same age, determined using a 5 percent interest rate and the applicable mortality table described in § 1.417(e)-1(d)(2) for that annuity starting date. In this case, the straight life annuity payable under the plan commencing at the same age is \$152,619. Because the plan's factors for actuarial equivalence in this case are the same standardized actuarial factors required to be applied to determine the actuarially equivalent straight life annuity, the actuarially equivalent straight life annuity using the required standardized factors is also \$152,619. With respect to the 10-year certain and life annuity distribution, M's annual benefit is equal to the greater of the two resulting amounts (\$152,619 and \$152,619), or \$152,619.

*Example 3. (i) Facts.* The facts are the same as in *Example 1*. Participant M retires at age 62 with a benefit under the plan (before the application of section 415) of \$100,000 (after application of the plan's early retirement factors) and a Social Security supplement of \$10,000 per year payable until age 65. N chooses to receive the accrued benefit in the form of a straight life annuity. The Plan has no provisions under which the actuarial value of the Social Security supplement can be paid as a level annuity for life.

(ii) *Conclusion.* Because the form of benefit elected by M is a form of benefit to which section 417(e)(3) does not apply and because the plan does not provide for a straight life annuity beginning at age 62, the annual benefit for purposes of this section is the annual amount of the straight life annuity commencing at age 62 that is actuarially equivalent to the distribution stream of \$110,000 for three years and \$100,000 thereafter, where actuarial equivalence is determined using a 5 percent interest rate and the applicable mortality table described in § 1.417(e)-1(d)(2) for the annuity starting date. In this case, the actuarially equivalent straight life annuity is \$102,180. Accordingly, with respect to this distribution stream, N's annual benefit is equal to \$102,180. The results are the same without regard to whether the Social Security supplement is a QSUPP (as defined in § 1.401(a)(4)-12).

*Example 4. (i) Facts.* Plan B is a defined benefit plan that provides a benefit equal to 100 percent of a participant's average compensation for the period of the participant's high-3 years of service, payable as a straight life annuity. For a married participant who does not elect another form of benefit, the benefit is payable in the form of a joint and 100 percent survivor annuity benefit that is a QJSA within the meaning of section 417 and that is reduced from the straight life annuity. For purposes of determining the amount of this QJSA, the plan provides that the reduction is only half of the reduction that would normally apply

under the actuarial assumptions specified in the plan for determining actuarial equivalence of optional forms. The plan also provides that a married participant can elect to receive the plan benefits as a straight life annuity, or in the form of a single sum distribution that is the actuarial equivalent of the joint and 100 percent survivor annuity determined using the applicable interest rate and the applicable mortality table under section 417(e)(3) and § 1.417(e)-1(d). Participant O elects, with spousal consent, a single-sum distribution.

(ii) *Conclusion.* The special rule that disregards the value of the survivor portion of a QJSA set forth in paragraph (c)(4)(i) of this section only applies to a benefit that is payable in the form of a qualified joint and survivor annuity. Any other form of benefit must be adjusted to a straight life annuity in accordance with paragraph (c)(1) of this section. Accordingly, because the benefit payable under the plan in the form of a single-sum distribution is actuarially equivalent to a straight life annuity that is greater than 100 percent of a participant's average compensation for the period of the participant's high-3 years of service, the limitation of section 415(b)(1)(B) has been exceeded.

*Example 5. (i) Facts.* Plan C is a defined benefit plan that provides an option to receive the benefit in the form of a joint and 100 percent survivor annuity with a 10-year certain feature, where the survivor beneficiary is the participant's spouse.

(ii) *Conclusion.* Since this form of benefit is not subject to section 417(e)(3), for a participant at age 65, the annual benefit with respect to the joint and 100 percent survivor annuity with a 10-year certain feature is determined for purposes of this section as the greater of the annual amount of the straight life annuity payable to the participant under the plan at age 65 (if any), or the annual amount of the straight life annuity commencing at age 65 that has the same actuarial present value as the joint and 100 percent survivor annuity with a 10-year certain feature (but excluding the survivor annuity payments pursuant to paragraph (c)(4)(i)(A) of this section), computing using a 5 percent interest assumption and the applicable mortality table described in § 1.417(e)-1(d)(2) for the annuity starting date. This latter amount is equal to the product of the annual payments under this optional form of benefit and the factor that provides for actuarial equivalence between a straight life annuity and a 10-year certain and life annuity (with no annuity for the survivor) computed using a 5 percent interest rate and the applicable mortality table described in § 1.417(e)-1(d)(2) for the annuity starting date.

*Example 6. (i) Facts.* Plan E provides a benefit at age 65 of a straight life annuity equal to the lesser of 90 percent of the participant's average compensation for the period of the participant's high-3 years of service and \$148,500. Upon retirement at age 65, the optional forms of benefit available to a participant include payment of a QJSA with annual payments equal to 50 percent of the annual payments under the straight life annuity, along with a single-sum distribution

that is actuarially equivalent (determined as the greater of the single sum calculated using a 5 percent interest assumption and the section 417(e)(3)(A)(ii)(I) mortality table in effect on January 1, 2003, and the single sum calculated using the section 417(e)(3)(A)(ii)(II) applicable interest rate and the section 417(e)(3)(A)(ii)(I) applicable mortality table for the distribution) to 50 percent of the annual payments under the straight life annuity. Participant Q retires at age 65. Q's average compensation for the period of Q's high-3 years of service is \$100,000. Q elects to receive a distribution in the optional form of benefit described above, under which the annual payments under the QJSA are \$45,000 and the single-sum distribution is equal to \$530,734. Q's spouse is 3 years younger than Q.

(ii) *Determination of annual benefit.* Q's annual benefit under Plan E for purposes of section 415(b) is determined as the sum of the annual benefit attributable to the QJSA portion of the distribution and the annual benefit attributable to the single-sum portion of the distribution.

(iii) *Annual benefit attributable to QJSA portion.* Because survivor benefits are not taken into account in determining the annual benefit attributable to the QJSA portion of the distribution, the annual benefit attributable to the QJSA portion of the distribution is determined as if that distribution were a straight life annuity of \$45,000 per year commencing at age 65. Thus, no form adjustment is needed to determine the annual benefit attributable to the QJSA portion of the distribution, and the annual benefit attributable to the QJSA portion of the benefit is \$45,000.

(iv) *Annual benefit attributable to single sum portion.* The annual benefit attributable to the single sum portion of the distribution is determined as the greatest of the annual amount of the actuarially equivalent straight life annuity commencing at the same age (determined using the plan's actuarial factors), the annual amount of the actuarially equivalent straight life annuity commencing at the same age (determined using a 5.5 percent interest assumption and the applicable mortality table under § 1.417(e)-1(d)(2) for the distribution), and the annual amount of the actuarially equivalent straight life annuity commencing at the same age (determined using the applicable interest rate and applicable mortality table under section 417(e)(3) and §§ 1.417(e)-1(d)(2) and (d)(3) for the distribution) divided by 1.05. With respect to the single-sum distribution, the annual amount of the actuarially equivalent straight life annuity commencing at the same age determined using the plan's actuarial factors is equal to \$45,954. The annual amount of the actuarially equivalent straight life annuity commencing at the same age determined using a 5.5 percent interest assumption and the applicable mortality table under § 1.417(e)-1(d)(2) for the distribution is \$46,912. The actuarially equivalent straight life annuity commencing at the same age determined using the applicable interest rate and the applicable mortality table under section 417(e)(3) and §§ 1.417(e)-1(d)(2) and (d)(3) for the distribution is equal to \$45,954. This amount

divided by 1.05 is equal to \$43,766. Thus, the annual benefit attributable to the single sum portion of the benefit is \$46,912.

(v) *Conclusion.* Q's annual benefit under the optional form of benefit for purposes of section 415(b) is equal to the sum of the annual benefit attributable to the QJSA portion of the distribution and the annual benefit attributable to the single sum portion of the distribution, or \$91,912. Because Q's average compensation for the period of Q's high-3 years of service is \$100,000, the distribution satisfies the compensation limit of section 415(b)(1)(B).

*Example 7. (i) Facts.* Plan D is a defined benefit plan with a normal retirement age of 65. The normal retirement benefit under Plan D (and the only life annuity available under Plan D) is a life annuity with a fixed increase of 2 percent per year. The increase applies to the benefit provided in the prior year and is thus compounded. The plan provides that the benefit is limited to the lesser of 84 percent of the participant's average compensation for the period of the participant's high-3 years of service or 84 percent of the age-adjusted section 415(b)(1)(A) dollar limit (which is assumed to be \$180,000 at age 65). Plan D does not incorporate the section 415(d) cost-of-living adjustments to the section 415(b) limits for limitation years following the limitation year in which a participant incurs a severance from employment. Participant P retires at age 65, at which time P's average compensation for the period of P's high-3 years of service is \$165,000. Under Plan D, P commences receiving benefits in the form of a life annuity of \$138,600 with a fixed increase of 2 percent per year.

(ii) *Conclusion.* Because Plan D does not provide for a straight life annuity and the form of benefit is not subject to section 417(e)(3), P's annual benefit for purposes of section 415(b) is the annual amount of the straight life annuity, commencing at age 65, that is actuarially equivalent to the distribution stream of \$138,600 with a fixed increase of 2 percent per year, where actuarial equivalence is determined using a 5 percent interest rate and the applicable mortality table for the distribution under section 417(e)(3) and § 1.417(e)-1(d)(2). In order to satisfy the requirements of section 415 and this section, this annual benefit must not exceed 100 percent of the average compensation for the period of the participant's high-3 years of service, or \$165,000. Using a 5 percent interest rate and the section 417(e)(3) applicable mortality table for the distribution, the actuarially equivalent straight life annuity is \$165,453, which exceeds \$165,000. Accordingly, the plan fails to satisfy the compensation-based limitation of section 415(b)(1)(B).

*Example 8. (i) Facts.* The facts are the same as in *Example 7*, except that Plan D incorporates by reference the section 415(d) cost-of-living adjustments to the section 415(b) limits as described in § 1.415(a)-1(d)(3)(v) and Plan D provides that the benefit is limited to the applicable section 415(b) limit. Under Plan D, P commences receiving benefits at age 65 in the form of a life annuity of \$138,221 with a fixed increase of 2 percent per year.

(ii) *Conclusion.* Because Plan D does not provide for a straight life annuity and the form of benefit is not subject to section 417(e)(3), P's annual benefit for purposes of section 415(b) is the annual amount of the straight life annuity, commencing at age 65, that is actuarially equivalent to the distribution stream of \$138,221 with a fixed increase of 2 percent per year, where actuarial equivalence is determined using a 5 percent interest rate and the applicable mortality table for P's annuity starting date under section 417(e)(3) and § 1.417(e)-1(d)(2). In order to satisfy the requirements of section 415(b) and this section, this annual benefit must not exceed 100 percent of P's average compensation for the period of P's high-3 years of service, or \$165,000. Using a 5 percent interest rate and the section 417(e)(3) applicable mortality table for the distribution, the actuarially equivalent straight life annuity is \$165,000, which does not exceed \$165,000. Accordingly, the plan satisfies the compensation-based limitation of section 415(b)(1)(B).

(iii) *Section 415(d) adjustments.* In addition to the fixed 2 percent per year automatic increase, P's benefit will be increased in limitation years following the limitation year in which P retires in accordance with the plan provisions that incorporate by reference the section 415(d) cost-of-living adjustments to the section 415(b) limits (or, if Plan D did not incorporate by reference the section 415(d) adjustments, P's benefit may be increased pursuant to plan amendments that comply with the safe harbors provided in § 1.415(d)-1(a)(5) or (6)), and such increases will not cause P's benefit to violate the requirements of section 415(b). For example, if in a later limitation year the applicable section 415(b) limit is increased by 3 percent pursuant to section 415(d) and § 1.415(d)-1, P's benefit payable under Plan D will be increased by both the fixed automatic 2 percent per year increase and by the 3 percent section 415(d) cost-of-living adjustment. The effect of the combined increases may result in P's benefits for a year exceeding the then applicable dollar limit under section 415(b), but the plan will not violate section 415(b).

*Example 9.* (i) *Facts.* The facts are the same as in *Example 7*, except that the plan provides that benefits are limited to the lesser of 100 percent of the participant's average compensation for the period of the participant's high-3 years of service or 100 percent of the age-adjusted section 415(b)(1)(A) dollar limit. Assume that P retires at age 65 with a benefit in the form of a life annuity of \$165,000 per year with a fixed increase of 2 percent per year. Additionally, assume that Plan D incorporates by reference the section 415(d) cost-of-living adjustments to the section 415(b) limits as described in § 1.415(a)-1(d)(3)(v) and the plan provides pursuant to paragraph (c)(5) of this section that in no event will a benefit payable from the plan, as increased by the fixed increase of 2 percent per year, be greater than the section 415(b) limit applicable as of the annuity starting date for the benefit (increased pursuant to the rules of section 415(d) and § 1.415(d)-1).

(ii) *Conclusion.* The benefit payable to P at age 65 is not required to be adjusted to take

into account the fixed increase of 2 percent per year. This is because the benefit payable to P satisfies the requirements of section 415(b) without regard to the fixed increase of 2 percent per year, and pursuant to paragraph (c)(5) of this section, the plan provides that the benefit payable to P, as increased by the fixed increase of 2 percent per year, will never be greater than the section 415(b) limit applicable as of P's annuity starting date (increased in subsequent limitation years pursuant to the rules of section 415(d) and § 1.415(d)-1).

(iii) *Section 415(d) adjustments.* In addition to the fixed 2 percent per year automatic increase, P's benefit will be increased in limitation years following the limitation year in which P retires in accordance with the plan provisions that incorporate by reference the section 415(d) cost-of-living adjustments to the section 415(b) limits (or, if Plan D did not incorporate by reference the section 415(d) adjustments, P's benefit may be increased pursuant to plan amendments that comply with the safe harbors provided in § 1.415(d)-1(a)(5) or (6)), and such increases will not cause P's benefit to violate the requirements of section 415(b). However, pursuant to paragraph (c)(5)(iii) of this section, P's benefit during any limitation year, as increased by the 2 percent per year automatic increase feature and any plan provisions that incorporate by reference the section 415(d) cost-of-living adjustments or any plan amendments that increase P's benefits, cannot exceed the then applicable section 415(b) limit (as increased pursuant to section 415(d) and § 1.415(d)-1).

*Example 10.* (i) *Facts.* Employer T maintains a defined benefit plan. Under the terms of the plan, all benefits in pay status (other than single sum payments) are adjusted upwards or downwards annually depending on an annual comparison of actual return on plan assets and an assumed interest rate of 4 percent. Thus, the plan does not offer a straight life annuity form of benefit, and the plan must determine for purposes of applying the section 415(b) limits the actuarially equivalent straight life annuity for benefits provided under the plan.

(ii) *Conclusion.* Benefits under the plan are paid in a form to which section 417(e)(3) does not apply. In determining the actuarially equivalent straight life annuity of benefits that are subject to the annual investment performance adjustment, the plan must assume a 5 percent return on plan assets. See paragraph (c)(2) of this section. Therefore, in determining the actuarially equivalent straight life annuity, the plan must assume that the form of benefit payable under the plan will be an annuity that increases annually by a factor equal to 1.05 divided by 1.04. This increasing annuity is then converted to an actuarially equivalent straight life annuity under paragraph (c)(2) of this section using a 5 percent interest rate and the applicable mortality table described in § 1.417(e)-1(d)(2) for the relevant annuity starting date.

*Example 11.* (i) *Facts.* R is a participant in a defined benefit plan maintained by R's employer. Under the terms of the plan, R must make contributions to the plan in a

stated amount to accrue benefits derived from employer contributions.

(ii) *Conclusion.* R's contributions are mandatory employee contributions within the meaning of section 411(c)(2)(C) and, thus, the annual benefit attributable to these contributions is not taken into account for purposes of testing the annual benefit derived from employer contributions against the applicable limitation on benefits. However, these contributions are treated as contributions to a defined contribution plan maintained by R's employer for purposes of section 415(c). See § 1.415(c)-1(a)(2)(ii)(B). Accordingly, with respect to the current limitation year, the limitation on benefits (as described in paragraph (a)(1) of this section) is applicable to the annual benefit attributable to employer contributions to the defined benefit plan, and the limitation on contributions and other additions (as described in § 1.415(c)-1) is applicable to the portion of the plan treated as a defined contribution plan, which consists of R's mandatory contributions. These same limitations would also apply if, instead of providing for mandatory employee contributions, the plan permitted voluntary employee contributions, because the portion of the plan attributable to voluntary employee contributions and earnings thereon is treated as a defined contribution plan maintained by the employer pursuant to section 414(k), and thus is not subject to the limitations of section 415(b).

*Example 12.* (i) *Facts.* V is a participant in a defined benefit plan maintained by V's employer. Under the terms of the plan, V must make contributions to the plan in a stated amount to accrue benefits derived from employer contributions. V's contributions are mandatory employee contributions within the meaning of section 411(c)(2)(C). Thus, the annual benefit attributable to these contributions is not taken into account for purposes of testing the annual benefit derived from employer contributions against the applicable limitation on benefits. V terminates employment and receives a distribution from the plan that includes V's mandatory employee contributions. Subsequently, V resumes employment with the employer maintaining the plan. V recommences participation in the plan and repays the prior distribution from the plan (including the portion of the distribution that included V's prior mandatory employee contributions to the plan) with reasonable interest.

(ii) *Conclusion.* In determining V's annual benefit under the plan for purposes of applying the limitations of section 415(b), no portion of V's repayment of the prior distribution is treated as employee contributions. See paragraphs (b)(2)(ii)(C), (D) and (E) of this section. However, V's annual benefit under the plan is determined by excluding the portion of the annual benefit attributable to V's employee contributions to the plan made both prior to the first distribution and during V's subsequent recommencement of plan participation.

(d) *Adjustment to section 415(b)(1)(A) dollar limit for commencement before age 62—(1) General rule—(i)*

*Calculation using statutory factors.* For a distribution with an annuity starting date that occurs before the participant attains the age of 62, the age-adjusted section 415(b)(1)(A) dollar limit generally is determined as the actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a deferred straight life annuity commencing at age 62, where annual payments under the straight life annuity commencing at age 62 are equal to the dollar limitation of section 415(b)(1)(A) (as adjusted pursuant to section 415(d) and § 1.415(d)-1 for the limitation year), and where the actuarially equivalent straight life annuity is computed using a 5 percent interest rate and the applicable mortality table under § 1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the participant's age based on completed calendar months as of the annuity starting date). However, if the plan has an immediately commencing straight life annuity payable both at age 62 and the age of benefit commencement, then the age-adjusted section 415(b)(1)(A) dollar limit is equal to the lesser of—

(A) The limit as otherwise determined under this paragraph (d)(1)(i); and

(B) The amount determined under paragraph (d)(1)(ii) of this section.

(i) *Calculation using plan factors.* The amount determined under this paragraph (d)(1)(ii) is equal to the section 415(b)(1)(A) dollar limit (as adjusted pursuant to section 415(d) and § 1.415(d)-1 for the limitation year) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan to the annual amount of the straight life annuity under the plan commencing at age 62, with both annual amounts determined without applying the rules of section 415.

(2) *Mortality adjustments*—(i) *In general.* For purposes of determining the actuarially equivalent amount described in paragraph (d)(1)(i) of this section, to the extent that a forfeiture does not occur upon the participant's death before the annuity starting date, no adjustment is made to reflect the probability of the participant's death between the annuity starting date and the participant's attainment of age 62, unless the plan provides for such an adjustment. To the extent that a forfeiture occurs upon the participant's death before the annuity starting date, an adjustment must be made to reflect the probability of the participant's death between the annuity starting date and the participant's attainment of age 62.

(ii) *No forfeiture deemed to occur where qualified preretirement survivor annuity payable.* For purposes of paragraphs (d)(2)(i) and (e)(2)(i) of this section, a plan is permitted to treat no forfeiture as occurring upon a participant's death if the plan does not charge participants for providing a qualified preretirement survivor annuity (QPSA) (as defined in section 417(c)) on the participant's death, but only if the plan applies this treatment both for adjustments before age 62 and adjustments after age 65. Thus, in such a case, the plan is permitted to provide that, in computing the adjusted dollar limitation under section 415(b)(1)(A), no adjustment is made to reflect the probability of a participant's death after the annuity starting date and before age 62 or after age 65 and before the annuity starting date.

(3) *Exception for certain participants of certain governmental plans.* Pursuant to section 415(b)(2)(G) and (H), no age adjustment is made to the dollar limit for commencement before age 62 for any qualified participant. For this purpose, a qualified participant is a participant in a defined benefit plan that is maintained by a state, Indian tribal government (as defined in section 7701(a)(40)), or any political subdivision of a state or Indian tribal government with respect to whom the service taken into account in determining the amount of the benefit under the defined benefit plan includes at least 15 years of service of the participant—

(i) As a full-time employee of any police department or fire department that is organized and operated by the state, Indian tribal government, or political subdivision maintaining such defined benefit plan to provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such state, Indian tribal government, or political subdivision; or

(ii) As a member of the Armed Forces of the United States.

(4) *Exception for survivor and disability benefits under governmental plans.* Pursuant to section 415(b)(2)(I), no age adjustment is made to the dollar limit for commencement before age 62 for a distribution from a governmental plan (as defined in section 414(d)) on account of the participant's becoming disabled by reason of personal injuries or sickness, or as a result of the death of the participant.

(5) *Special rule for commercial airline pilots.* Pursuant to section 415(b)(9), no age adjustment is made to the dollar limit for early commencement on or after age 60 for a participant if—

(i) The participant is a commercial airline pilot;

(ii) The participant separates from service upon or after attaining age 60; and

(iii) As of the time of the participant's retirement, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age occurring on or after age 60 and before age 62.

(6) *No decrease in age-adjusted section 415(b)(1)(A) dollar limit on account of age or service.* Notwithstanding any other provision of this paragraph (d), the age-adjusted section 415(b)(1)(A) dollar limit applicable to a participant does not decrease on account of an increase in age or the performance of additional service.

(7) *Examples.* The following examples illustrate the application of this paragraph (d). For purposes of these examples, it is assumed that the dollar limitation under section 415(b)(1)(A) for all relevant years is \$180,000, that the normal form of benefit under the plan is a straight life annuity payable beginning at age 65, and that all payments other than a payment of a single sum are made monthly, on the first day of each calendar month. The examples are as follows:

*Example 1.* (i) Plan A provides that early retirement benefits are determined by reducing the accrued benefit by 4 percent for each year that the early retirement age is less than age 65. Participant M retires at age 60 with exactly 30 years of service with a benefit (prior to the application of section 415) in the form of a straight life annuity of \$100,000 payable at age 65, and is permitted to elect to commence benefits at any time between M's retirement and M's attainment of age 65. For example, M can elect to commence benefits at age 60 in the amount of \$80,000, can wait until age 62 and commence benefits in the amount of \$88,000, or can wait until age 65 and commence benefits in the amount of \$100,000. Plan A provides a QPSA to all married participants without charge. Plan A provides (consistent with paragraph (d)(2)(ii) of this section) that, for purposes of adjusting the dollar limitation under section 415(b)(1)(A) for commencement before age 62 or after age 65, no forfeiture is treated as occurring upon a participant's death before retirement and, therefore, in computing the adjusted dollar limitation under section 415(b)(1)(A), no adjustment is made to reflect the probability of a participant's death after the annuity starting date and before age 62 or after age 65 and before the annuity starting date.

(ii) The age-adjusted section 415(b)(1)(A) dollar limit that applies for commencement of M's benefit at age 60 is the lesser of the section 415(b)(1)(A) dollar limit multiplied by the ratio of the annuity payable at age 60 to the annuity payable at age 62, or the

straight life annuity payable at age 60 that is actuarially equivalent, using 5 percent interest and the applicable mortality table effective for that annuity starting date under section 417(e)(3)(A)(ii)(I) and § 1.417(e)-1(d)(2), to the deferred annuity payable at age 62 of \$180,000 per year. In this case, the age-adjusted section 415(b)(1)(A) dollar limit at age 60 is \$156,229 (the lesser of \$163,636 (\$180,000 \* \$80,000/\$88,000) and \$156,229 (the straight life annuity at age 60 that is actuarially equivalent to a deferred annuity of \$180,000 commencing at age 62, determined using 5 percent interest and the applicable mortality table, without a mortality decrement for the period between 60 and 62)).

*Example 2.* (i) The facts are the same as in *Example 1*, except that participant M elects to retire at age 60, 6 months, and 21 days.

(ii) Under paragraph (d)(1)(i) of this section, M is treated as age 60 and 6 months (or, age 60.5). Absent the rule provided in paragraph (d)(6) of this section, the age-adjusted section 415(b)(1)(A) dollar limit that applies for commencement of M's benefit at age 60.5 is the lesser of the section 415(b)(1)(A) dollar limit multiplied by the ratio of the annuity payable at age 60.5 to the annuity payable at age 62, or the straight life annuity payable at age 60.5 that is actuarially equivalent, using 5 percent interest and the applicable mortality table for that annuity starting date under section 417(e)(3)(A)(ii)(I) and § 1.417(e)-1(d)(2), to the deferred annuity payable at age 62 of \$180,000 per year. The age-adjusted section 415(b)(1)(A) dollar limit at age 60.5 is \$161,769 (the lesser of \$167,727 (\$180,000 \* \$82,000/\$88,000) and \$161,769 (the straight life annuity at age 60.5 that is actuarially equivalent to a deferred annuity of \$180,000 commencing at age 62, determined using 5 percent interest and the applicable mortality table, without a mortality decrement for the period between 60.5 and 62)).

*Example 3.* (i) The facts are the same as in *Example 1*, except the plan provides that, if a participant has 30 or more years of service, no reduction applies for benefits commencing at age 62 and later.

(ii) Absent the rule provided in paragraph (d)(6) of this section, the age-adjusted section 415(b)(1)(A) dollar limit that applies for commencement of M's benefit at age 60 is the lesser of the section 415(b)(1)(A) dollar limit multiplied by the ratio of the annuity payable at age 60 to the annuity payable at age 62, or the straight life annuity payable at age 60 that is actuarially equivalent, using 5 percent interest and the applicable mortality table for that annuity starting date under section 417(e)(3)(A)(ii)(I) and § 1.417(e)-1(d)(2), to the deferred annuity payable at age 62 of \$180,000 per year. In this case, because M has 30 years of service and would be eligible for the unreduced early retirement benefit at age 62, the age-adjusted section 415(b)(1)(A) dollar limit at age 60 would be \$144,000 (the lesser of \$144,000 (\$180,000 \* \$80,000/\$100,000) and \$156,229 (the straight life annuity at age 60 that is actuarially equivalent to a deferred annuity of \$180,000 commencing at age 62, determined using 5 percent interest and the applicable mortality table, without a mortality decrement for the period between 60 and 62)).

(iii) However, at age 59 11/12 with 29 11/12 years of service, the age-adjusted section 415(b)(1)(A) dollar limit for M is \$155,311 (the lesser of \$162,955 (\$180,000 \* \$79,667/\$88,000) and \$155,311 (the straight life annuity at age 59 11/12 that is actuarially equivalent to a deferred annuity of \$180,000 commencing at age 62, determined using 5 percent interest and the applicable mortality table, without a mortality decrement for the period between 59 and 62)). Thus, after applying the rule provided in paragraph (d)(6) of this section, the age-adjusted section 415(b)(1)(A) dollar limit that applies for commencement of M's benefit at age 60 is \$155,311.

*Example 4.* (i) The facts are the same as in *Example 1*, except that the plan provides that, if a participant has 30 or more years of service, then no reduction is made in early retirement benefits if the early retirement age is at least age 62 and, in the case of an early retirement age before age 62, the early retirement benefit is determined by reducing the accrued benefit by 4 percent for each year that the early retirement age is less than age 62.

(ii) The age-adjusted section 415(b)(1)(A) dollar limit that applies for commencement of M's benefit at age 60 is the lesser of the section 415(b)(1)(A) dollar limit multiplied by the ratio of the annuity payable at age 60 to the annuity payable at age 62, or the straight life annuity payable at age 60 that is actuarially equivalent, using 5 percent interest and the applicable mortality table for that annuity starting date under section 417(e)(3)(A)(ii)(I) and § 1.417(e)-1(d)(2), to the deferred annuity payable at age 62 of \$180,000 per year. In this case, because M has 30 years of service and would be eligible for the unreduced early retirement benefit at age 62, the age-adjusted section 415(b)(1)(A) dollar limit at age 60 is \$156,229 (the lesser of \$165,600 (\$180,000 \* \$92,000/\$100,000) and \$156,229 (the straight life annuity at age 60 that is actuarially equivalent to a deferred annuity of \$180,000 commencing at age 62, determined using 5 percent interest and the applicable mortality table, without a mortality decrement for the period between 60 and 62)).

*Example 5.* (i) The facts are the same as in *Example 1*, except that Participant M chooses to receive benefits in the form of a 10-year certain and life annuity under which payments are 97 percent of the periodic payments that would be made under the immediately commencing straight life annuity. Annual payments to M are 97 percent of \$80,000, or \$77,600. Additionally, M's average compensation for the period of M's high-3 years of service is \$120,000. As in *Example 1*, the age-adjusted section 415(b)(1)(A) dollar limit at age 60 is \$156,229.

(ii) In the case of a form of benefit to which section 417(e)(3) does not apply, the annual benefit for purposes of this section is the greater of the annual amount of the plan's straight life annuity commencing at the same age or the annual amount of the actuarially equivalent straight life annuity commencing at the same age, determined using a 5 percent interest rate and the applicable mortality table for that annuity starting date under

section 417(e)(3)(A)(ii)(I) and § 1.417(e)-1(d)(2). In this case, the straight life annuity payable under the plan commencing at the same age is \$80,000. The annual amount of the straight life annuity that is actuarially equivalent to the \$77,600 benefit payable as a 10-year certain and life annuity is determined by applying the required standardized factors (a 5 percent interest assumption and the applicable mortality under section 417(e)(3)(A)(ii)(I) and § 1.417(e)-1(d)(2), and is \$79,416. With respect to the 10-year certain and life annuity commencing at age 62, M's annual benefit is equal to the greater of the two resulting amounts (\$80,000 and \$79,416), or \$80,000. Because M's annual benefit is less than the age-adjusted section 415(b)(1)(A) dollar limit and is less than the section 415(b)(1)(B) compensation limit, M's benefit satisfies section 415.

*Example 6.* (i) Participant O is a full-time civilian employee of the Harbor Police Division of the State of X Port Authority. The Harbor Police Division provides police protection services. O performs clerical services for the Harbor Police Division. O is a participant in the defined benefit plan that is maintained by the State of X with respect to whom the years of service taken into account in determining the amount of the benefit under the plan includes 10 years of service working for the Harbor Police Division and 5 years of service as a member of the Armed Forces of the United States.

(ii) For a distribution with an annuity starting date that occurs before O attains the age of 62, there is no age adjustment to the section 415(b)(1)(A) dollar limit.

*Example 7.* (i) Participant R is a full-time employee of the Emergency Medical Service Department of County Y (which is not a part of a police or fire department) who performs services as a driver of an ambulance. R is a participant in the defined benefit plan that is maintained by County Y with respect to whom the years of service taken into account in determining the amount of the benefit under the plan includes 15 years of service working for County Y. R does not have service credit for time in the Armed Forces of the United States.

(ii) The age adjustments to the limitations of section 415(b)(1)(A) pursuant to section 415(b)(2)(C) and (D) will apply if R commences receiving a distribution at an age to which either of those adjustments applies.

(e) *Adjustment to section 415(b)(1)(A) dollar limit for commencement after age 65—(1) General rule—(i) Calculation using statutory factors.* For a distribution with an annuity starting date that occurs after the participant attains the age of 65, the age-adjusted section 415(b)(1)(A) dollar limit generally is determined as the actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a straight life annuity commencing at age 65, where annual payments under the straight life annuity commencing at age 65 are equal to the dollar limitation of section

415(b)(1)(A) (as adjusted pursuant to section 415(d) and § 1.415(d)-1 for the limitation year), and where the actuarially equivalent straight life annuity is computed using a 5 percent interest rate and the applicable mortality table under § 1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the participant's age based on completed calendar months as of the annuity starting date). However, if the plan has an immediately commencing straight life annuity payable as of the annuity starting date and an immediately commencing straight life annuity payable at age 65, then the age-adjusted section 415(b)(1)(A) dollar limit is equal to the lesser of—

(A) The limit as otherwise determined under this paragraph (e)(1)(i); and

(B) The amount determined under paragraph (e)(1)(ii) of this section.

(ii) *Calculation using plan factors.* The amount determined under this paragraph (e)(1)(ii) is equal to the section 415(b)(1)(A) dollar limit (as adjusted pursuant to section 415(d) and § 1.415(d)-1 for the limitation year) multiplied by the adjustment ratio described in paragraph (e)(2)(i) of this section.

(2) *Adjustment ratio*—(i) *General rule.* For purposes of applying the rule of paragraph (e)(1)(ii) of this section, the adjustment ratio is equal to the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan described in paragraph (e)(2)(ii) of this section to the adjusted age 65 straight life annuity described in paragraph (e)(2)(iii) of this section.

(ii) *Adjusted immediately commencing straight life annuity.* The adjusted immediately commencing straight life annuity that is used for purposes of paragraph (e)(2)(i) of this section is the annual amount of the immediately commencing straight life annuity payable to the participant, computed disregarding the participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are applied to offset accruals. For this purpose, the annual amount of the immediately commencing straight life annuity is determined without applying the rules of section 415.

(iii) *Adjusted age 65 straight life annuity.* The adjusted age 65 straight life annuity that is used for purposes of paragraph (e)(2)(i) of this section is the annual amount of the straight life annuity that would be payable under the plan to a hypothetical participant who is 65 years old and has the same accrued benefit (with no actuarial

increases for commencement after age 65) as the participant receiving the distribution (determined disregarding the participant's accruals after age 65 and without applying the rules of section 415).

(3) *Mortality adjustments*—(i) *In general.* For purposes of determining the actuarially equivalent amount described in paragraph (e)(1)(i) of this section, to the extent that a forfeiture does not occur upon the participant's death before the annuity starting date, no adjustment is made to reflect the probability of the participant's death between the participant's attainment of age 65 and the annuity starting date. To the extent that a forfeiture occurs upon the participant's death before the annuity starting date, an adjustment must be made to reflect the probability of the participant's death between the participant's attainment of age 65 and the annuity starting date.

(ii) *No forfeiture deemed to occur where QPSA payable.* See paragraph (d)(2)(ii) of this section for a rule deeming no forfeiture to occur if the plan does not charge participants for providing a QPSA on the participant's death.

(4) *Examples.* The following examples illustrate the application of this paragraph (e):

*Example 1.* (i) Plan A provides that monthly benefits payable upon commencement after normal retirement age (which is age 65) are increased by 0.5 percent for each month of delay in commencement after attainment of normal retirement age. Plan A provides a QPSA to all married participants without charge. Plan A provides (consistent with paragraph (d)(2)(ii) of this section) that, for purposes of adjusting the dollar limitation under section 415(b)(1)(A) for commencement before age 62 or after age 65, no adjustment is made to reflect the probability of a participant's death between the annuity starting date and the participant's attainment of age 62 or between the age of 65 and the annuity starting date. The normal form of benefit under Plan A is a straight life annuity commencing at age 65. Plan A does not provide additional benefit accruals once a participant is credited with 30 years of service. Participant M was credited with 30 years of service under Plan A when M attained age 65. M retires at age 70 on January 1, 2008, with a benefit (prior to the application of section 415) that is payable monthly in the form of a straight life annuity of \$195,000, which reflects the actuarial increase of 30 percent applied to the accrued benefit of \$150,000. It is assumed that all payments under Plan A, other than a payment of a single sum, are made monthly, on the first day of each calendar month. It is also assumed that the dollar limit in 2008 is \$185,000.

(ii) The age-adjusted section 415(b)(1)(A) dollar limit at age 70 is the lesser of the section 415(b)(1)(A) dollar limit multiplied

by the ratio of the adjusted immediately commencing straight life annuity payable at age 70 (computed disregarding the rules of section 415 and accruals after age 65, but including actuarial adjustments) to the adjusted age 65 straight life annuity (computed disregarding the rules of section 415 and any accruals after age 65), or the straight life annuity payable at age 70 that is actuarially equivalent, using 5 percent interest and the applicable mortality table for that annuity starting date under section 417(e)(3)(A)(ii)(I) and § 1.417(e)-1(d)(2), to the straight life annuity payable at age 65, where annual payments under the straight life annuity payable at age 65 are equal to the dollar limitation of section 415(b)(1)(A). In this case, the age-adjusted section 415(b)(1)(A) dollar limit at age 70 is \$240,500 (the lesser of \$240,500 (\$185,000 \* \$195,000 / \$150,000) and \$271,444 (the straight life annuity at age 70 that is actuarially equivalent to an annuity of \$185,000 commencing at age 65, determined using 5 percent interest and the applicable mortality table, without a mortality decrement for the period between 65 and 70)).

*Example 2.* (i) The facts are the same as in Example 1, except that Plan A does not limit benefit accruals to 30 years of credited service, and thus M accrues benefits between ages 65 and 70.

(ii) Since M's accruals after attaining age 65 are disregarded for purposes of determining the age-adjusted section 415(b)(1)(A) dollar limit applicable to M at age 70, the result is the same as in Example 1.

*Example 3.* (i) The facts are the same as in Example 1, except that Plan A does not limit benefit accruals to 30 years of credited service. However, benefit accruals after an employee has reached normal retirement age (age 65), are offset by the actuarial increase that the plan provides for commencement of benefits after normal retirement age.

(ii) The result is the same as in Example 1, even if the actuarial increases for post-age 65 benefit commencement provided under Plan A do or do not fully offset M's benefit accruals after attaining age 65. This is because benefit accruals after age 65 are disregarded for purposes of determining the age-adjusted section 415(b)(1)(A) dollar limit applicable to M after age 65.

(f) *Total annual payments not in excess of \$10,000*—(1) *In general.* Pursuant to section 415(b)(4), the annual benefit (without regard to the age at which benefits commence) payable with respect to a participant under any defined benefit plan is not considered to exceed the limitations on benefits described in section 415(b)(1) and in paragraph (a)(1) of this section if—

(i) The benefits (other than benefits not taken into account in the computation of the annual benefit under the rules of paragraph (b) or (c) of this section) payable with respect to the participant under the plan and all other defined benefit plans of the employer do not in the aggregate exceed \$10,000 (as adjusted under paragraph (g) of this

section) for the limitation year, or for any prior limitation year; and

(ii) The employer (or a predecessor employer) has not at any time maintained a defined contribution plan in which the participant participated.

(2) *Computation of benefits for purposes of applying the \$10,000 amount.* For purposes of paragraph (f)(1)(i) of this section, the benefits payable with respect to the participant under a plan for a limitation year reflect all amounts payable under the plan for the limitation year (other than benefits not taken into account in the computation of the annual benefit under the rules of paragraph (b) or (c) of this section), and are not adjusted for form of benefit or commencement date.

(3) *Special rule with respect to participants in multiemployer plans.* The special \$10,000 exception set forth in paragraph (f)(1) of this section applies to a participant in a multiemployer plan described in section 414(f) without regard to whether that participant ever participated in one or more other plans maintained by an employer who also maintains the multiemployer plan, provided that none of such other plans were maintained as a result of collective bargaining involving the same employee representative as the multiemployer plan.

(4) *Special rule with respect to employee contributions.* Notwithstanding §§ 1.415(c)-1(a)(2)(ii)(B) and 1.415(c)-1(b)(3), mandatory employee contributions under a defined benefit plan described in paragraph (b)(2)(iii) of this section are not considered a separate defined contribution plan maintained by the employer for purposes of paragraph (f)(1)(ii) of this section. Thus, the special dollar limitation provided for in this paragraph (f) applies to a contributory defined benefit plan.

Similarly, for purposes of this paragraph (f), an individual medical account under section 401(h) or an account for postretirement medical benefits established pursuant to section 419A(d)(1) is not considered a separate defined contribution plan maintained by the employer.

(5) *Examples.* The application of this paragraph (f) may be illustrated by the following examples. For purposes of these examples, it is assumed that each participant has 10 years of participation in the plan and service with the employer. The examples are as follows:

*Example 1.* (i) B is a participant in a defined benefit plan maintained by X Corporation, which provides for a benefit payable in the form of a straight life annuity beginning at age 65. B's average compensation for the period of B's high-3

years of service is \$6,000. The plan does not provide for mandatory employee contributions, and at no time has B been a participant in a defined contribution plan maintained by X. With respect to the current limitation year, B's benefit under the plan (before the application of section 415) is \$9,500.

(ii) Because annual payments under B's benefit do not exceed \$10,000, and because B has at no time participated in a defined contribution plan maintained by X, the benefits payable under the plan are not considered to exceed the limitation on benefits otherwise applicable to B (\$6,000).

(iii) This result would remain the same even if, under the terms of the plan, B's benefit of \$9,500 were payable at age 60, or if the plan provided for mandatory employee contributions.

*Example 2.* (i) The facts are the same as in *Example 1*, except that the plan provides for a benefit payable in the form of a life annuity with a 10-year certain feature with annual payments of \$9,500. Assume that, after the adjustment described in paragraph (c) of this section, B's actuarially equivalent straight life annuity (which is the annual benefit used for demonstrating compliance with section 415) for the current limitation year is \$10,400.

(ii) For purposes of applying the special rule provided in this paragraph for total benefits not in excess of \$10,000, there is no adjustment required if the retirement benefit payable under the plan is not in the form of a straight life annuity. Therefore, because B's retirement benefit does not exceed \$10,000, B may receive the full \$9,500 benefit without the otherwise applicable benefit limitations of this section being exceeded.

*Example 3.* (i) The facts are the same as in *Example 1*, except that the plan provides for a benefit payable in the form of a single sum and the amount of the single sum that is the actuarial equivalent of the straight life annuity payable to B (\$9,500 annually), determined in accordance with the rules of section 417(e)(3) and § 1.417(e)-1(d), is \$95,000.

(ii) Because the amount payable to B for the limitation year would exceed \$10,000, the rule of this paragraph (f) does not provide an exception from the generally applicable limits of section 415(b)(1) for the single-sum distribution. Thus, the otherwise applicable limits apply to the single-sum distribution, and a single-sum distribution of \$95,000 would not satisfy the requirements of section 415(b). Limiting the single-sum distribution to \$60,000 (the present value of the annuity that complies with the compensation-based limitation of section 415(b)(1)(B)) in order to satisfy section 415 would be an impermissible forfeiture under the requirements of section 411(a). Accordingly, the plan should not provide for a single-sum distribution in these circumstances.

(g) *Special rule for participation or service of less than 10 years—(1) Proration of dollar limit based on years of participation—(i) In general.* Pursuant to section 415(b)(5)(A), where a participant has less than 10 years of participation in the plan, the dollar limit described in paragraph (a)(1)(i) of

this section (as adjusted pursuant to section 415(d), § 1.415(d)-1, and paragraphs (d) and (e) of this section) is reduced by multiplying the otherwise applicable limitation by a fraction—

(A) The numerator of which is the number of years of participation in the plan (or 1, if greater); and

(B) The denominator of which is 10.

(ii) *Years of participation.* The following rules apply for purposes of determining a participant's years of participation for purposes of this paragraph (g)(1)—

(A) A participant is credited with a year of participation (computed to fractional parts of a year) for each accrual computation period for which the participant is credited with at least the number of hours of service (or period of service if the elapsed time method is used for benefit accrual purposes) required under the terms of the plan in order to accrue a benefit for the accrual computation period, and the participant is included as a plan participant under the eligibility provisions of the plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a year of participation credited to the participant is equal to the amount of benefit accrual service credited to the participant for such accrual computation period. For example, if under the terms of a plan, a participant receives 1/10 of a year of benefit accrual service for an accrual computation period for each 200 hours of service, and the participant is credited with 1,000 hours of service for the period, the participant is credited with 1/2 a year of participation for purposes of section 415(b)(5)(A) and this paragraph (g)(1).

(B) A participant who is permanently and totally disabled within the meaning of section 415(c)(3)(C)(i) for an accrual computation period is credited with a year of participation with respect to that period for purposes of section 415(b)(5)(A) and this paragraph (g)(1).

(C) For a participant to receive a year of participation (or part thereof) for an accrual computation period for purposes of section 415(b)(5)(A) and this paragraph (g)(1), the plan must be established no later than the last day of such accrual computation period.

(D) No more than one year of participation may be credited for any 12-month period for purposes of section 415(b)(5)(A) and this paragraph (g)(1).

(2) *Proration of compensation limit and special rule for total annual payments less than \$10,000 based on years of service—(i) In general.* Pursuant to section 415(b)(5)(B), where a participant has less than 10 years of

service with the employer, the compensation limit described in paragraph (a)(1)(ii) of this section and the \$10,000 amount under the special rule for small annual payments under paragraph (f) of this section are reduced by multiplying the otherwise applicable limitation by a fraction—

(A) The numerator of which is the number of years of service with the employer (or 1, if greater); and

(B) The denominator of which is 10.

(ii) *Years of service*—(A) *In general.* For purposes of applying this paragraph (g)(2), years of service must be determined on a reasonable and consistent basis. A plan is considered to be determining years of service on a reasonable and consistent basis for this purpose if, subject to the limits of paragraph (g)(2)(ii)(B) of this section, a participant is credited with a year of service (computed to fractional parts of a year) for each accrual computation period for which the participant is credited with at least the number of hours of service (or period of service if the elapsed time method is used for benefit accrual purposes) required under the terms of the plan in order to accrue a benefit for the accrual computation period.

(B) *Rules of application.* No more than one year of service may be credited for any 12-month period for purposes of section 415(b)(5)(B). In addition, only the participant's service with the employer or a predecessor employer (as defined in § 1.415(f)–1(c)) may be taken into account in determining the participant's years of service for this purpose. Thus, if an employer does not maintain a former employer's plan, a participant's service with the former employer may be taken into account in determining the participant's years of service for purposes of this paragraph (g)(2) only if the former employer is a predecessor employer with respect to the employer pursuant to § 1.415(f)–1(c)(2) (which defines predecessor employer to include, under certain circumstances, a former entity that antedates the employer).

(C) *Period of disability.*

Notwithstanding the rules of paragraph (g)(2)(ii)(B) of this section, a plan is permitted to provide that a participant who is permanently and totally disabled within the meaning of section 415(c)(3)(C)(i) for an accrual computation period is credited with service with respect to that period for purposes of section 415(b)(5)(B).

(3) *Exception for survivor and disability benefits under governmental plans.* The requirements of this paragraph (g) (regarding participation or service of less than 10 years) do not

apply to a distribution from a governmental plan (as defined in section 414(d)) on account of the participant's becoming disabled by reason of personal injuries or sickness, or as a result of the death of the participant.

(4) *Examples.* The provisions of this paragraph (g) may be illustrated by the following examples:

*Example 1.* (i) C begins employment with Employer A on January 1, 2005, at the age of 58. Employer A maintains only a noncontributory defined benefit plan which provides for a straight life annuity beginning at age 65 and uses the calendar year for the limitation and plan year. Employer A has never maintained a defined contribution plan. C becomes a participant in Employer A's plan on January 1, 2006, and works through December 31, 2011, when C is age 65. C begins to receive benefits under the plan in 2012. C's average compensation for the period of C's high-3 years of service is \$40,000. Furthermore, under the terms of Employer A's plan, for purposes of computing C's nonforfeitable percentage in C's accrued benefit derived from employer contributions, C has only 7 years of service with Employer A (2005–2011).

(ii) Because C has only 7 years of service with Employer A at the time he begins to receive benefits under the plan, the maximum permissible annual benefit payable with respect to C is \$28,000 (\$40,000 multiplied by 7/10).

*Example 2.* (i) The facts are the same as in *Example 1*, except that C's average compensation for the period of his high-3 years of service is \$8,000.

(ii) Because C has only 7 years of service with Employer A at the time he begins to receive benefits, the maximum benefit payable with respect to C would be reduced to \$5,600 (\$8,000 multiplied by 7/10). However, the special rule for total benefits not in excess of \$10,000, provided in paragraph (f) of this section, is applicable in this case. Accordingly, C may receive an annual benefit of \$7,000 (\$10,000 multiplied by 7/10) without the benefit limitations of this section being exceeded.

*Example 3.* (i) Employer B maintains a defined benefit plan. Benefits under the plan are computed based on months of service rather than years of service. Accordingly, for purposes of applying the reduction based on years of service less than 10 to the limitations under section 415(b), the plan provides that the otherwise applicable limitation is multiplied by a fraction, the numerator of which is the number of completed months of service with the employer (but not less than 12 months), and the denominator of which is 120. The plan further provides that months of service are computed in the same manner for this purpose as for purposes of computing plan benefits.

(ii) The manner in which the plan applies the reduction based on years of service less than 10 to the limitations under section 415(b) is consistent with the requirements of this paragraph (g).

*Example 4.* (i) G begins employment with Employer D on January 1, 2003, at the age of

58. Employer D maintains a noncontributory defined benefit plan which provides for a straight life annuity beginning at age 65 and uses the calendar year for the limitation and plan year. G becomes a participant in Employer D's plan on January 1, 2004, and works through December 31, 2009, when G is age 65. G performs sufficient service to be credited with a year of service under the plan for each year during 2003 through 2009 (although G is not credited with a year of service for 2003 because G is not yet a plan participant). G begins to receive benefits under the plan during 2010. The plan's accrual computation period is the plan year. The plan provides that, for purposes of applying the rules of section 415(b)(5)(B), a participant is credited with a year of service (computed to fractional parts of a year) for each plan year for which the participant is credited with sufficient service to accrue a benefit for the plan year. G's average compensation for the period of G's high-3 years of service is \$200,000. It is assumed for purposes of this example that the dollar limitation of section 415(b)(1)(A) for limitation years ending in 2010 is \$195,000.

(ii) G has 7 years of service and 6 years of participation in the plan at the time G begins to receive benefits under the plan. Accordingly, the limitation under section 415(b)(1)(B) based on G's average compensation for the period of G's high-3 years of service that applies pursuant to the adjustment required under section 415(b)(5)(B) is \$140,000 (\$200,000 multiplied by 7/10), and the dollar limitation under section 415(b)(1)(A) that applies to G pursuant to the adjustment required under section 415(b)(5)(A) is \$117,000 (\$195,000 multiplied by 6/10).

(h) *Retirement Protection Act of 1994 transition rules.* For special rules affecting the actuarial adjustment for form of benefit under paragraph (c) of this section and the adjustment to the dollar limit for early or late commencement under paragraphs (d) and (e) of this section for certain plans adopted and in effect before December 8, 1994, see section 767(d)(3)(A) of the Uruguay Round Agreements Act of 1994, Public Law 103–465 (108 Stat. 4809) as amended by section 1449(a) of the Small Business Job Protection Act of 1996, Public Law 104–188 (110 Stat. 1755). The Commissioner may provide guidance regarding these special rules in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

■ **Par. 10.** Section 1.415(b)–2 is added and reserved.

§ 1.415(b)–2 **Multiple annuity starting dates.** [Reserved].

■ **Par. 11.** Section 1.415(c)–1 is added to read as follows:

**§ 1.415(c)-1 Limitations for defined contribution plans.**

(a) *General rules*—(1) *Maximum limitations.* Under section 415(c) and this section, to satisfy the provisions of section 415(a) for any limitation year, except as provided by paragraph (a)(3) of this section, the annual additions (as defined in paragraph (b) of this section) credited to the account of a participant in a defined contribution plan for the limitation year must not exceed the lesser of—

(i) \$40,000 (adjusted pursuant to section 415(d) and § 1.415(d)-1(b)); or  
(ii) 100 percent of the participant's compensation (as defined in § 1.415(c)-2) for the limitation year.

(2) *Defined contribution plan*—(i) *Definition.* For purposes of section 415 and regulations promulgated under section 415, the term *defined contribution plan* means a defined contribution plan within the meaning of section 414(i) (including the portion of a plan treated as a defined contribution plan under the rules of section 414(k)) that is—

(A) A plan described in section 401(a) which includes a trust which is exempt from tax under section 501(a);

(B) An annuity plan described in section 403(a); or

(C) A simplified employee pension described in section 408(k).

(ii) *Additional plans treated as defined contribution plans*—(A) *In general.* Contributions to the types of arrangements described in paragraphs (a)(2)(ii)(B) through (D) of this section are treated as contributions to defined contribution plans for purposes of section 415 and regulations promulgated under section 415.

(B) *Employee contributions to a defined benefit plan.* Mandatory employee contributions (as defined in section 411(c)(2)(C) and § 1.411(c)-1(c)(4), regardless of whether the plan is subject to the requirements of section 411) to a defined benefit plan are treated as contributions to a defined contribution plan. For this purpose, contributions that are picked up by the employer as described in section 414(h)(2) are not considered employee contributions.

(C) *Individual medical benefit accounts under section 401(h).* Pursuant to section 415(l)(1), contributions allocated to any individual medical benefit account which is part of a pension or annuity plan established pursuant to section 401(h) are treated as contributions to a defined contribution plan.

(D) *Post-retirement medical accounts for key employees.* Pursuant to section 419A(d)(2), amounts attributable to

medical benefits allocated to an account established for a key employee (any employee who, at any time during the plan year or any preceding plan year, is or was a key employee as defined in section 416(i)) pursuant to section 419A(d)(1) are treated as contributions to a defined contribution plan.

(iii) *Section 403(b) annuity contracts.* Annual additions under an annuity contract described in section 403(b) are treated as annual additions under a defined contribution plan for purposes of this section.

(3) *Alternative contribution limitations*—(i) *Church plans.* For alternative contribution limitations relating to church plans, see paragraph (d) of this section.

(ii) *Special rules for medical benefits.* For additional rules relating to certain medical benefits, see paragraph (e) of this section.

(iii) *Employee stock ownership plans.* For additional rules relating to employee stock ownership plans, see paragraph (f) of this section.

(b) *Annual additions*—(1) *In general*—(i) *General definition.* The term *annual addition* means, for purposes of this section, the sum, credited to a participant's account for any limitation year, of—

(A) Employer contributions;

(B) Employee contributions; and

(C) Forfeitures.

(ii) *Certain excess amounts treated as annual additions.* Contributions do not fail to be annual additions merely because they are excess contributions (as described in section 401(k)(8)(B)) or excess aggregate contributions (as described in section 401(m)(6)(B)), or merely because excess contributions or excess aggregate contributions are corrected through distribution.

(iii) *Direct transfers.* The direct transfer of a benefit or employee contributions from a qualified plan to a defined contribution plan does not give rise to an annual addition.

(iv) *Reinvested employee stock ownership plan dividends.* The reinvestment of dividends on employer securities under an employee stock ownership plan pursuant to section 404(k)(2)(A)(iii)(II) does not give rise to an annual addition.

(2) *Employer contributions*—(i) *Amounts treated as an annual addition.* For purposes of paragraph (b)(1)(i)(A) of this section, the term *annual addition* includes employer contributions credited to the participant's account for the limitation year and other allocations described in paragraph (b)(4) of this section that are made during the limitation year. See paragraph (b)(6) of this section for timing rules applicable

to annual additions with respect to employer contributions.

(ii) *Amounts not treated as annual additions*—(A) *Certain restorations of accrued benefits.* The restoration of an employee's accrued benefit by the employer in accordance with section 411(a)(3)(D) or section 411(a)(7)(C) or resulting from the repayment of cashouts (as described in section 415(k)(3)) under a governmental plan (as defined in section 414(d)) is not considered an annual addition for the limitation year in which the restoration occurs. This treatment of a restoration of an employee's accrued benefit as not giving rise to an annual addition applies regardless of whether the plan restricts the timing of repayments to the maximum extent allowed by section 411(a).

(B) *Catch-up contributions.* A catch-up contribution made in accordance with section 414(v) and § 1.414(v)-1 does not give rise to an annual addition.

(C) *Restorative payments.* A restorative payment that is allocated to a participant's account does not give rise to an annual addition for any limitation year. For this purpose, restorative payments are payments made to restore losses to a plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under Title I of the Employee Retirement Income Security Act of 1974 (88 Stat. 829), Public Law 93-406 (ERISA) or under other applicable federal or state law, where plan participants who are similarly situated are treated similarly with respect to the payments. Generally, payments to a defined contribution plan are restorative payments only if the payments are made in order to restore some or all of the plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the plan). This includes payments to a plan made pursuant to a Department of Labor order, the Department of Labor's Voluntary Fiduciary Correction Program, or a court-approved settlement, to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the plan). Payments made to a plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty under Title I of ERISA are not restorative payments and generally constitute

contributions that give rise to annual additions under paragraph (b)(4) of this section.

(D) *Excess deferrals.* Excess deferrals that are distributed in accordance with § 1.402(g)-1(e)(2) or (3) do not give rise to annual additions.

(3) *Employee contributions.* For purposes of paragraph (b)(1)(i)(B) of this section, the term *annual addition* includes mandatory employee contributions (as defined in section 411(c)(2)(C) and regulations promulgated under section 411) as well as voluntary employee contributions. The term *annual addition* does not include—

(i) Rollover contributions (as described in sections 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16));

(ii) Repayments of loans made to a participant from the plan;

(iii) Repayments of amounts described in section 411(a)(7)(B) (in accordance with section 411(a)(7)(C)) and section 411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in section 414(d)) as described in section 415(k)(3);

(iv) Repayments that would have been described in paragraph (b)(3)(iii) of this section except that the plan does not restrict the timing of repayments to the maximum extent permitted by section 411(a); or

(v) Employee contributions to a qualified cost of living arrangement within the meaning of section 415(k)(2)(B).

(4) *Transactions with plan.* The Commissioner may in an appropriate case, considering all of the facts and circumstances, treat transactions between the plan and the employer, transactions between the plan and the employee, or certain allocations to participants' accounts as giving rise to annual additions. Further, where an employee or employer transfers assets to a plan in exchange for consideration that is less than the fair market value of the assets transferred to the plan, there is an annual addition in the amount of the difference between the value of the assets transferred and the consideration. A transaction described in this paragraph (b)(4) may constitute a prohibited transaction with the meaning of section 4975(c)(1).

(5) *Contributions other than cash.* For purposes of this paragraph (b), a contribution by the employer or employee of property rather than cash is considered to be a contribution in an amount equal to the fair market value of the property on the date the contribution is made. For this purpose, the fair market value is the price at

which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. In addition, a contribution described in this paragraph (b)(5) may constitute a prohibited transaction within the meaning of section 4975(c)(1).

(6) *Timing rules—(i) In general—(A) Date of allocation.* For purposes of this paragraph (b), an annual addition is credited to the account of a participant for a particular limitation year if it is allocated to the participant's account under the terms of the plan as of any date within that limitation year. Similarly, an annual addition that is made pursuant to a corrective amendment that complies with the requirements of § 1.401(a)(4)-11(g) is credited to the account of a participant for a particular limitation year if it is allocated to the participant's account under the terms of the corrective amendment as of any date within that limitation year. However, if the allocation of an annual addition is dependent upon the satisfaction of a condition (such as continued employment or the occurrence of an event) that has not been satisfied by the date as of which the annual addition is allocated under the terms of the plan, then the annual addition is considered allocated for purposes of this paragraph (b) as of the date the condition is satisfied.

(B) *Date of employer contributions.* For purposes of this paragraph (b), employer contributions are not treated as credited to a participant's account for a particular limitation year unless the contributions are actually made to the plan no later than 30 days after the end of the period described in section 404(a)(6) applicable to the taxable year with or within which the particular limitation year ends. If, however, contributions are made by an employer exempt from Federal income tax (including a governmental employer), the contributions must be made to the plan no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the employer keeps its books) with or within which the particular limitation year ends. If contributions are made to a plan after the end of the period during which contributions can be made and treated as credited to a participant's account for a particular limitation year, allocations attributable to those contributions are treated as credited to the participant's account for

the limitation year during which those contributions are made.

(C) *Date of employee contributions.* For purposes of this paragraph (b), employee contributions, whether voluntary or mandatory, are not treated as credited to a participant's account for a particular limitation year unless the contributions are actually made to the plan no later than 30 days after the close of that limitation year.

(D) *Date for forfeitures.* A forfeiture is treated as an annual addition for the limitation year that contains the date as of which it is allocated to a participant's account as a forfeiture.

(E) *Treatment of elective contributions as plan assets.* The extent to which elective contributions constitute plan assets for purposes of the prohibited transaction provisions of section 4975 and Title I of ERISA, is determined in accordance with regulations and rulings issued by the Department of Labor. See 29 CFR 2510.3-102.

(ii) *Special timing rules—(A) Corrective contributions.* For purposes of this section, if, in a particular limitation year, an employer allocates an amount to a participant's account because of an erroneous forfeiture in a prior limitation year, or because of an erroneous failure to allocate amounts in a prior limitation year, the corrective allocation will not be considered an annual addition with respect to the participant for that particular limitation year, but will be considered an annual addition for the prior limitation year to which it relates. An example of a situation in which an employer contribution might occur under the circumstances described in the preceding sentence is a retroactive crediting of service for an employee under 29 CFR 2530.200b-2(a)(3) in accordance with an award of back pay. For purposes of this paragraph (b)(6)(ii), if the amount so contributed in the particular limitation year takes into account actual investment gains attributable to the period subsequent to the year to which the contribution relates, the portion of the total contribution that consists of such gains is not considered as an annual addition for any limitation year.

(B) *Contributions for accumulated funding deficiencies and previously waived contributions—(1) Accumulated funding deficiency.* In the case of a defined contribution plan to which the rules of section 412 apply, a contribution made to reduce an accumulated funding deficiency will be treated as if it were timely made for purposes of determining the limitation year in which the annual additions arising from the contribution are made,

but only if the contribution is allocated to those participants who would have received an annual addition if the contribution had been timely made.

(2) *Previously waived contributions.* In the case of a defined contribution plan to which the rules of section 412 apply and for which there has been a waiver of the minimum funding standard in a prior limitation year in accordance with section 412(d), that portion of an employer contribution in a subsequent limitation year which, if not for the waiver, would have otherwise been required in the prior limitation year under section 412(a) will be treated as if it were timely made (without regard to the funding waiver) for purposes of determining the limitation year in which the annual additions arising from the contribution are made, but only if the contribution is allocated to those participants who would have received an annual addition if the contribution had been timely made (without regard to the funding waiver).

(3) *Interest.* For purposes of determining the amount of the annual addition under paragraphs (b)(6)(ii)(B)(1) and (2) of this section, a reasonable amount of interest paid by the employer is disregarded. However, any interest paid by the employer that is in excess of a reasonable amount, as determined by the Commissioner, is taken into account as an annual addition for the limitation year during which the contribution is made.

(C) *Simplified employee pensions.* For purposes of this paragraph (b), amounts contributed to a simplified employee pension described in section 408(k) are treated as allocated to the individual's account as of the last day of the limitation year ending with or within the taxable year for which the contribution is made.

(D) *Treatment of certain contributions made pursuant to veterans' reemployment rights.* If, in a particular limitation year, an employer contributes an amount to an employee's account with respect to a prior limitation year and such contribution is required by reason of such employee's rights under chapter 43 of title 38, United States Code, resulting from qualified military service, as specified in section 414(u)(1), then such contribution is not considered an annual addition with respect to the employee for that particular limitation year in which the contribution is made, but, in accordance with section 414(u)(1)(B), is considered an annual addition for the limitation year to which the contribution relates.

(c) *Examples.* The following examples illustrate the rules of paragraphs (a) and (b) of this section:

*Example 1.* (i) P is a participant in a qualified profit-sharing plan maintained by his employer, ABC Corporation. The limitation year for the plan is the calendar year. P's compensation (as defined in § 1.415(c)-2) for the current limitation year is \$30,000.

(ii) Because the compensation limitation described in section 415(c)(1)(B) applicable to P for the current limitation year is lower than the dollar limitation described in section 415(c)(1)(A), the maximum annual addition which can be allocated to P's account for the current limitation year is \$30,000 (100 percent of \$30,000).

*Example 2.* (i) The facts are the same as in *Example 1*, except that P's compensation for the current limitation year is \$140,000.

(ii) The maximum amount of annual additions that may be allocated to P's account in the current limitation year is the lesser of \$140,000 (100 percent of P's compensation) or the dollar limitation of section 415(c)(1)(A) as in effect as of January 1 of the calendar year in which the current limitation year ends. If, for example, the dollar limitation of section 415(c)(1)(A) in effect as of January 1 of the calendar year in which the current limitation year ends is \$45,000, then the maximum annual addition that can be allocated to P's account for the current limitation year is \$45,000.

*Example 3.* (i) Employer N maintains a qualified profit-sharing plan that uses the calendar year as its plan year and its limitation year. N's taxable year is a fiscal year beginning June 1 and ending May 31. Under the terms of the profit-sharing plan maintained by N, employer contributions are made to the plan two months after the close of N's taxable year and are allocated as of the last day of the plan year ending within the taxable year (and are not dependent on the satisfaction of a condition). Thus, employer contributions for the 2008 calendar year limitation year are made on July 31, 2009 (the date that is two months after the close of N's taxable year ending May 31, 2009) and are allocated as of December 31, 2008.

(ii) Because the employer contributions are actually made to the plan no later than 30 days after the end of the period described in section 404(a)(6) with respect to N's taxable year ending May 31, 2009, the contributions will be considered annual additions for the 2008 calendar year limitation year.

*Example 4.* (i) The facts are the same as in *Example 3*, except that the plan year for the profit-sharing plan maintained by N is the 12-month period beginning on February 1 and ending on January 31. The limitation year continues to be the calendar year. Under the terms of the plan, an employer contribution which is made to the plan on July 31, 2009, is allocated to participants' accounts as of January 31, 2009.

(ii) Because the last day of the plan year is in the 2009 calendar year limitation year, and because, under the terms of the plan, employer contributions are allocated to participants' accounts as of the last day of the plan year, the contributions are considered

annual additions for the 2009 calendar year limitation year.

*Example 5.* (i) XYZ Corporation maintains a profit-sharing plan to which a participant may make voluntary employee contributions for any year not to exceed 10 percent of the participant's compensation for the year. The plan permits a participant to make retroactive make-up contributions for any year for which the participant contributed less than 10 percent of compensation. XYZ uses the calendar year as the plan year and the limitation year. Under the terms of the plan, voluntary employee contributions are credited to a participant's account for a particular limitation year if such contributions are allocated to the participant's account as of any date within that limitation year. Participant A's compensation is as follows—

Limitation year	Compensation
2008 .....	\$30,000
2009 .....	\$32,000
2010 .....	\$34,000
2011 .....	\$36,000

(ii) Participant A makes no voluntary employee contributions during limitation years 2008, 2009, and 2010. On October 1, 2011, participant A makes a voluntary employee contribution of \$13,200 (10 percent of A's aggregate compensation for limitation years 2008, 2009, 2010, and 2011 of \$132,000). Under the terms of the plan, \$3,000 of this 2011 contribution is allocated to A's account as of limitation year 2008; \$3,200 is allocated to A's account of limitation year 2009; \$3,400 is allocated to A's account as of limitation year 2010, and \$3,600 is allocated to A's account as of limitation year 2011.

(iii) Under the rule set forth in paragraph (b)(6)(i)(C) of this section, employee contributions will not be considered credited to a participant's account for a particular limitation year for section 415 purposes unless the contributions are actually made to the plan no later than 30 days after the close of that limitation year. Thus, A's voluntary employee contribution of \$13,200 made on October 1, 2011, would be considered as credited to A's account only for the 2011 calendar year limitation year, notwithstanding the plan provisions.

(d) *Special rules relating to church plans—(1) Alternative contribution limitation—(i) In general.* Pursuant to section 415(c)(7)(A), notwithstanding the general rule of paragraph (a)(1) of this section, additions for a section 403(b) annuity contract for a year with respect to a participant who is an employee of a church or a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), when expressed as an annual addition to such participant's account, are treated as not exceeding the limitation of paragraph (a)(1) of this section if such annual additions for the year are not in excess of \$10,000.

(ii) *\$40,000 aggregate limitation.* With respect to any participant, the total amount of annual additions that are in excess of the limitation of paragraph (a)(1) of this section but, pursuant to the rule of paragraph (d)(1)(i) of this section, are treated as not exceeding that limitation (taking into account the rule of paragraph (d)(3) of this section) cannot exceed \$40,000. Thus, the aggregate of annual additions for all limitation years that would exceed the limitation of this section but for this paragraph (d)(1) is limited to \$40,000.

(2) *Years of service taken into account for duly ordained, commissioned, or licensed ministers or lay employees.* For purposes of this paragraph (d)—

(i) All years of service by an individual as an employee of a church, or a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), are considered as years of service for one employer; and

(ii) All amounts contributed for annuity contracts by each such church (or convention or association of churches) during such years for the employee are considered to have been contributed by one employer.

(3) *Foreign missionaries.* Pursuant to section 415(c)(7)(C), in the case of any individual described in paragraph (d)(1) of this section performing any services for the church outside the United States during the limitation year, additions for an annuity contract under section 403(b) for any year are not treated as exceeding the limitation of paragraph (a)(1) of this section if such annual additions for the year do not exceed \$3,000. The preceding sentence shall not apply with respect to any taxable year to any individual whose adjusted gross income for such taxable year (determined separately and without regard to community property law) exceeds \$17,000.

(4) *Church, convention or association of churches.* For purposes of this paragraph (d), the terms “church” and “convention or association of churches” have the same meaning as when used in section 414(e).

(5) *Examples.* The following examples illustrate the rules of this paragraph (d):

*Example 1.* (i) E is an employee of ABC Church earning \$7,000 during each calendar year. E participates in a section 403(b) annuity contract maintained by ABC Church beginning in the year 2008. E's taxable year is the calendar year, and the limitation year for the plan coincides with the calendar year. ABC Church contributes \$10,000 to be allocated to E's account under the plan for the year 2008.

(ii) Under paragraph (d)(1) of this section, this allocation is treated as not violating the

limits established in paragraph (a)(1) of this section because it does not exceed \$10,000. Moreover, since an annual addition of \$10,000 would otherwise exceed the limitation of paragraph (a)(1) of this section by \$3,000, \$3,000 is counted toward the aggregate limitation specified in paragraph (d)(1)(ii) of this section for year 2008. Accordingly, ABC Church may make such allocations for 13 years (for example, for years 2008 through 2020) without exceeding the aggregate limitation of \$40,000 specified in paragraph (d) of this section. For the fourteenth year, ABC Church could allocate only \$8,000 to E's account (the sum of the \$7,000 limitation computed under paragraph (a)(1)(ii) of this section and the remaining \$1,000 of the \$40,000 aggregate limitation under paragraph (d)(1)(ii) of this section on annual additions in excess of the limits under paragraph (a)(1) of this section).

*Example 2.* (i) F is an employee of XYZ Church and F's taxable year is the calendar year. F earns \$2,000 during each calendar year for services he provides to XYZ Church, all of which are performed outside the United States during each calendar year. F participates in a section 403(b) annuity contract maintained by ABC Church beginning in the year 2008. The limitation year for the plan coincides with the calendar year. ABC Church contributes \$10,000 to be allocated to F's account under the plan for the year 2008. F's adjusted gross income for each taxable year (determined separately and without regard to community property law) does not exceed \$17,000.

(ii) Under paragraph (d)(1) of this section, this allocation is treated as not violating the limits established in paragraph (a)(1) of this section because it does not exceed \$10,000. Moreover, since an annual addition of \$10,000 would otherwise exceed the limitation of paragraph (a)(1) of this section by \$7,000 (the excess of \$10,000 over the greater of the \$2,000 compensation limitation under section 415(c)(1)(B) or the \$3,000 section 415(c)(7)(C) amount), XYZ Church may make such allocations for 5 years (for example, for years 2008 through 2012) without exceeding the aggregate limitation of \$40,000 specified in paragraph (d) of this section. In year 2013, XYZ church may contribute \$8,000 to be allocated to F's account under the plan (the sum of the \$3,000 limitation computed under paragraph (d)(3) of this section and the remaining \$5,000 of the \$40,000 aggregate limitation under paragraph (d)(1)(ii) of this section on annual additions in excess of the limits under paragraph (a)(1) of this section). For years after 2013, pursuant to paragraph (d)(3) of this section, XYZ Church could allocate \$3,000 per year to F's account.

(e) *Special rules for medical benefits.* The limit under paragraph (a)(1)(ii) of this section (100 percent of the participant's compensation for the limitation year) does not apply to—

(1) An individual medical benefit account (as defined in section 415(l)); or

(2) A post-retirement medical benefits account for a key employee (as defined in section 419A(d)(1)).

(f) *Special rules for employee stock ownership plans—(1) In general.* Special rules apply to employee stock ownership plans, as provided in paragraphs (f)(2) through (f)(4) of this section.

(2) *Determination of annual additions for leveraged employee stock ownership plans—(i) In general.* Except as provided in this paragraph (f) of this section, in the case of an employee stock ownership plan to which an exempt loan as described in § 54.4975-7(b) of this chapter has been made, the amount of employer contributions that is considered an annual addition for the limitation year is calculated with respect to employer contributions of both principal and interest used to repay that exempt loan for the limitation year.

(ii) *Employer stock that has decreased in value.* A plan may provide that, in lieu of computing annual additions in accordance with paragraph (f)(2)(i) of this section, annual additions with respect to a loan repayment described in paragraph (f)(2)(i) of this section are determined as the fair market value of shares released from the suspense account on account of the repayment and allocated to participants for the limitation year if that amount is less than the amount determined in accordance with paragraph (f)(2)(i) of this section.

(3) *Exclusions from annual additions for certain employee stock ownership plans that allocate to a broad range of participants—(i) General rule.* Pursuant to section 415(c)(6), in the case of an employee stock ownership plan (as described in section 4975(e)(7)) that meets the requirements of paragraph (f)(3)(ii) of this section for a limitation year, the limitations imposed by this section do not apply to—

(A) Forfeitures of employer securities (within the meaning of section 409(l)) under such an employee stock ownership plan if such securities were acquired with the proceeds of a loan (as described in section 404(a)(9)(A)); or

(B) Employer contributions to such an employee stock ownership plan which are deductible under section 404(a)(9)(B) and charged against the participant's account.

(ii) *Employee stock ownership plans to which the special exclusion applies.* An employee stock ownership plan meets the requirements of this paragraph (f)(3)(ii) for a limitation year if no more than one-third of the employer contributions for the limitation year that are deductible under section 404(a)(9) are allocated to highly compensated employees (within the meaning of section 414(q)).

(4) *Gratuitous transfers under section 664(g)(1)*. The amount of any qualified gratuitous transfer (as defined in section 664(g)(1)) allocated to a participant for any limitation year is not taken into account in determining whether any other annual addition exceeds the limitations imposed by this section, but only if the amount of the qualified gratuitous transfer does not exceed the limitations imposed by section 415.

■ **Par. 12.** Section 1.415(c)-2 is added to read as follows:

**§ 1.415(c)-2 Compensation.**

(a) *General definition.* Except as otherwise provided in this section, *compensation from the employer within the meaning of section 415(c)(3), which is used for purposes of section 415 and regulations promulgated under section 415*, means all items of remuneration described in paragraph (b) of this section, but excludes the items of remuneration described in paragraph (c) of this section. Paragraph (d) of this section provides safe harbor definitions of compensation that are permitted to be provided in a plan in lieu of the generally applicable definition of compensation. Paragraph (e) of this section provides timing rules relating to compensation. Paragraph (f) of this section provides rules regarding the application of the rules of section 401(a)(17) to the definition of compensation for purposes of section 415. Paragraph (g) of this section provides special rules relating to the determination of compensation, including rules for determining compensation for a section 403(b) annuity contract, rules for determining the compensation of employees of controlled groups or affiliated service groups, rules for disabled employees, rules relating to foreign compensation, rules regarding deemed section 125 compensation, rules for employees in qualified military service, and rules relating to back pay.

(b) *Items includible as compensation.* For purposes of applying the limitations of section 415, except as otherwise provided in this section, the term *compensation* means remuneration for services of the following types—

(1) The employee's wages, salaries, fees for professional services, and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the employer maintaining the plan, to the extent that the amounts are includible in gross income (or to the extent amounts would have been received and includible in gross income

but for an election under section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b)). These amounts include, but are not limited to, commissions paid to salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan as described in § 1.62-2(c).

(2) In the case of an employee who is an employee within the meaning of section 401(c)(1) and regulations promulgated under section 401(c)(1), the employee's earned income (as described in section 401(c)(2) and regulations promulgated under section 401(c)(2)), plus amounts deferred at the election of the employee that would be includible in gross income but for the rules of section 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

(3) Amounts described in section 104(a)(3), 105(a), or 105(h), but only to the extent that these amounts are includible in the gross income of the employee.

(4) Amounts paid or reimbursed by the employer for moving expenses incurred by an employee, but only to the extent that at the time of the payment it is reasonable to believe that these amounts are not deductible by the employee under section 217.

(5) The value of a nonstatutory option (which is an option other than a statutory option as defined in § 1.421-1(b)) granted to an employee by the employer, but only to the extent that the value of the option is includible in the gross income of the employee for the taxable year in which granted.

(6) The amount includible in the gross income of an employee upon making the election described in section 83(b).

(7) Amounts that are includible in the gross income of an employee under the rules of section 409A or section 457(f)(1)(A) or because the amounts are constructively received by the employee.

(c) *Items not includible as compensation.* The term *compensation* does not include—

(1) Contributions (other than elective contributions described in section 402(e)(3), section 408(k)(6), section 408(p)(2)(A)(i), or section 457(b)) made by the employer to a plan of deferred compensation (including a simplified employee pension described in section 408(k) or a simple retirement account described in section 408(p), and whether or not qualified) to the extent that the contributions are not includible in the gross income of the employee for the taxable year in which contributed. In addition, any distributions from a

plan of deferred compensation (whether or not qualified) are not considered as compensation for section 415 purposes, regardless of whether such amounts are includible in the gross income of the employee when distributed. However, if the plan so provides, any amounts received by an employee pursuant to a nonqualified unfunded deferred compensation plan are permitted to be considered as compensation for section 415 purposes in the year the amounts are actually received, but only to the extent such amounts are includible in the employee's gross income.

(2) Amounts realized from the exercise of a nonstatutory option (which is an option other than a statutory option as defined in § 1.421-1(b)), or when restricted stock or other property held by an employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture (see section 83 and regulations promulgated under section 83).

(3) Amounts realized from the sale, exchange, or other disposition of stock acquired under a statutory stock option (as defined in § 1.421-1(b)).

(4) Other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the employee and are not salary reduction amounts that are described in section 125).

(5) Other items of remuneration that are similar to any of the items listed in paragraphs (c)(1) through (c)(4) of this section.

(d) *Safe harbor rules with respect to plan's definition of compensation—(1) In general.* Paragraphs (d)(2) through (4) of this section contain safe harbor definitions of compensation that are automatically considered to satisfy section 415(c)(3) if specified in the plan. The Commissioner may, in revenue rulings, notices, and other guidance of general applicability published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), provide additional definitions of compensation that are treated as satisfying section 415(c)(3).

(2) *Simplified compensation.* The safe harbor definition of compensation under this paragraph (d)(2) includes only those items specified in paragraph (b)(1) or (2) of this section and excludes all those items listed in paragraph (c) of this section.

(3) *Section 3401(a) wages.* The safe harbor definition of compensation under this paragraph (d)(3) includes wages within the meaning of section 3401(a) (for purposes of income tax withholding at the source), plus

amounts that would be included in wages but for an election under section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). However, any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(2)) are disregarded for this purpose.

(4) *Information required to be reported under sections 6041, 6051 and 6052.* The safe harbor definition of compensation under this paragraph (d)(4) includes amounts that are compensation under the safe harbor definition of paragraph (d)(3) of this section, plus all other payments of compensation to an employee by his employer (in the course of the employer's trade or business) for which the employer is required to furnish the employee a written statement under sections 6041(d), 6051(a)(3), and 6052. See §§ 1.6041-1(a), 1.6041-2(a)(1), 1.6052-1, and 1.6052-2, and also see § 31.6051-1(a)(1)(i)(C) of this chapter. This safe harbor definition of compensation may be modified to exclude amounts paid or reimbursed by the employer for moving expenses incurred by an employee, but only to the extent that, at the time of the payment, it is reasonable to believe that these amounts are deductible by the employee under section 217.

(e) *Timing rules—(1) In general—(i) Payment during the limitation year.* Except as otherwise provided in this paragraph (e), in order to be taken into account for a limitation year, compensation within the meaning of section 415(c)(3) must be actually paid or made available to an employee (or, if earlier, includible in the gross income of the employee) within the limitation year. For this purpose, compensation is treated as paid on a date if it is actually paid on that date or it would have been paid on that date but for an election under section 125, 132(f)(4), 401(k), 403(b), 408(k), 408(p)(2)(A)(i), or 457(b).

(ii) *Payment prior to severance from employment.* Except as otherwise provided in this paragraph (e), in order to be taken into account for a limitation year, compensation within the meaning of section 415(c)(3) must be paid or treated as paid to the employee (in accordance with the rules of paragraph (e)(1)(i) of this section) prior to the employee's severance from employment with the employer maintaining the plan. See § 1.415(a)-1(f)(5) for the definition of severance from employment.

(2) *Certain minor timing differences.* Notwithstanding the provisions of paragraph (e)(1)(i) of this section, a plan may provide that compensation for a

limitation year includes amounts earned during that limitation year but not paid during that limitation year solely because of the timing of pay periods and pay dates if—

(i) These amounts are paid during the first few weeks of the next limitation year;

(ii) The amounts are included on a uniform and consistent basis with respect to all similarly situated employees; and

(iii) No compensation is included in more than one limitation year.

(3) *Compensation paid after severance from employment—(i) In general.* Any compensation described in paragraph (e)(3)(ii) of this section does not fail to be compensation (within the meaning of section 415(c)(3)) pursuant to the rule of paragraph (e)(1)(ii) of this section merely because it is paid after the employee's severance from employment with the employer maintaining the plan, provided the compensation is paid by the later of 2½ months after severance from employment with the employer maintaining the plan or the end of the limitation year that includes the date of severance from employment with the employer maintaining the plan. In addition, the plan may provide that amounts described in paragraph (e)(3)(iii) of this section are included in compensation (within the meaning of section 415(c)(3)) if—

(A) Those amounts are paid by the later of 2½ months after severance from employment with the employer maintaining the plan or the end of the limitation year that includes the date of severance from employment with the employer maintaining the plan; and

(B) Those amounts would have been included in the definition of compensation if they were paid prior to the employee's severance from employment with the employer maintaining the plan.

(ii) *Regular pay after severance from employment.* An amount is described in this paragraph (e)(3)(ii) if—

(A) The payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(B) The payment would have been paid to the employee prior to a severance from employment if the employee had continued in employment with the employer.

(iii) *Leave cashouts and deferred compensation.* An amount is described

in this paragraph (e)(3)(iii) if the amount is either—

(A) Payment for unused accrued bona fide sick, vacation, or other leave, but only if the employee would have been able to use the leave if employment had continued; or

(B) Received by an employee pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the employee at the same time if the employee had continued in employment with the employer and only to the extent that the payment is includible in the employee's gross income.

(iv) *Other post-severance payments.* Any payment that is not described in paragraph (e)(3)(ii) or (iii) of this section is not considered compensation under paragraph (e)(3)(i) of this section if paid after severance from employment with the employer maintaining the plan, even if it is paid within the time period described in paragraph (e)(3)(i) of this section. Thus, compensation does not include severance pay, or parachute payments within the meaning of section 280G(b)(2), if they are paid after severance from employment with the employer maintaining the plan, and does not include post-severance payments under a nonqualified unfunded deferred compensation plan unless the payments would have been paid at that time without regard to the severance from employment.

(4) *Salary continuation payments for military service and disabled participants.* The rule of paragraph (e)(1)(ii) of this section does not apply to payments to an individual who does not currently perform services for the employer by reason of qualified military service (as that term is used in section 414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service, but only if the plan so provides. In addition, the rule of paragraph (e)(1)(ii) of this section does not apply to compensation paid to a participant who is permanently and totally disabled (as defined in section 22(e)(3)) if the conditions set forth in paragraph (g)(4)(ii)(A) of this section are satisfied (applied by substituting a continuation of compensation for the continuation of contributions), but only if the plan so provides.

(5) *Special rule for governmental plans.* For purposes of applying the rules of paragraph (e)(3) of this section, a governmental plan (as defined in section 414(d)) may provide for the substitution of the calendar year in

which the severance from employment with the employer maintaining the plan occurs for the limitation year in which the severance from employment with the employer maintaining the plan occurs.

(6) *Examples.* The provisions of this paragraph (e) are illustrated by the following examples:

*Example 1.* (i) *Facts.* Participant A was a common law employee of Employer X, performing services as a script writer for Employer X from January 1, 2005 to December 31, 2005. Pursuant to a collective bargaining agreement, Employer X, Employer Y and Employer Z maintain and contribute to Plan T, a multiemployer plan (as defined in section 414(f)) in which Participant A participates. Under the collective bargaining agreement, Participant A is entitled to residual payments whenever television shows that Participant A wrote are re-used commercially (These residual payments constitute compensation described in paragraph (b) of this section and do not constitute compensation described in paragraph (c) of this section.). In the year 2008, Participant A receives residual payments from Employer X for television programs using the scripts that Participant A wrote in the year 2005 that were rebroadcast in the year 2008. In the years 2006, 2007, and 2008, Participant A was a common law employee of Employer Y, and did not perform any services for Employer X.

(ii) *Conclusion.* The residual payments received from Employer X by Participant A in the year 2008 are compensation for purposes of section 415(c)(3). The payments are not treated as made after severance from employment because Plan T is a multiemployer plan (as defined in section 414(f)) and Participant A continues to be employed by an employer maintaining Plan T.

*Example 2.* (i) *Facts.* The facts are the same as in *Example 1*, except that Participant A: ceased employment with Employer Y in the year 2006; subsequently moved away from the area in which A formerly worked; performs no services as an employee for any employer; and commenced receiving distributions under Plan T in March, 2006.

(ii) *Conclusion.* Based on the facts and circumstances, A has ceased employment with any employer maintaining Plan T. Pursuant to paragraph (e)(1)(ii) of this section, compensation must be paid prior to an employee's severance from employment with the employer maintaining the plan. Accordingly, the residual payments received by Participant A in the year 2008 are not compensation for purposes of section 415(c)(3).

(f) *Interaction with section 401(a)(17).* Because a plan may not base allocations (in the case of a defined contribution plan) or benefits (in the case of a defined benefit plan) on compensation in excess of the limitation under section 401(a)(17), a plan's definition of compensation for a year that is used for purposes of applying the limitations of

section 415 is not permitted to reflect compensation for a year that is in excess of the limitation under section 401(a)(17) that applies to that year. See §§ 1.401(a)(17)-1(a)(3)(i) and 1.401(a)(17)-1(b)(3)(ii) for rules regarding the effective date of increases in the section 401(a)(17) compensation limitation for a plan year and for a 12-month period other than the plan year.

(g) *Special rules—(1) Compensation for section 403(b) annuity contract.* In the case of an annuity contract described in section 403(b), the term *participant's compensation* means the participant's includible compensation determined under section 403(b)(3). Accordingly, the rules for determining a participant's compensation pursuant to section 415(c)(3) (other than section 415(c)(3)(E)) and this section do not apply to a section 403(b) annuity contract.

(2) *Employees of controlled groups of corporations, etc.* In the case of an employee of two or more corporations which are members of a controlled group of corporations (as defined in section 414(b) as modified by section 415(h)), the term *compensation* for such employee includes compensation from all employers that are members of the group, regardless of whether the employee's particular employer has a qualified plan. This special rule is also applicable to an employee of two or more trades or businesses (whether or not incorporated) that are under common control (as defined in section 414(c) as modified by section 415(h)), to an employee of two or more members of an affiliated service group as defined in section 414(m), and to an employee of two or more members of any group of employers who must be aggregated and treated as one employer pursuant to section 414(o).

(3) *Aggregation of section 403(b) annuity with qualified plan of controlled employer.* If a section 403(b) annuity contract is aggregated with a qualified plan of a controlled employer in accordance with § 1.415(f)-1(f)(2), then, in applying the limitations of section 415(c) in connection with the aggregation of the section 403(b) annuity with a qualified plan, the total compensation from both employers is permitted to be taken into account.

(4) *Permanent and total disability of defined contribution plan participant—(i) In general.* Pursuant to section 415(c)(3)(C), if the conditions set forth in paragraph (g)(4)(ii) of this section are satisfied, then, in the case of a participant in any defined contribution plan who is permanently and totally disabled (as defined in section 22(e)(3)), the *participant's compensation* means

the compensation the participant would have received for the year if the participant was paid at the rate of compensation paid immediately before becoming permanently and totally disabled, if such compensation is greater than the participant's compensation determined without regard to this paragraph (g)(4).

(ii) *Conditions for deemed disability compensation.* The rule of paragraph (g)(4)(i) of this section applies only if the following conditions are satisfied—

(A) Either the participant is not a highly compensated employee (as defined in section 414(q)) immediately before becoming disabled, or the plan provides for the continuation of contributions on behalf of all participants who are permanently and totally disabled for a fixed or determinable period;

(B) The plan provides that the rule of this paragraph (g)(4) (treating certain amounts as compensation for a disabled participant) applies with respect to the participant; and

(C) Contributions made with respect to amounts treated as compensation under this paragraph (g)(4) are nonforfeitable when made.

(5) *Foreign compensation, etc.—(i) In general.* Amounts paid to an individual as compensation for services do not fail to be treated as compensation under paragraphs (b)(1) and (2) of this section (and are not excluded from the definition of compensation pursuant to paragraph (c)(4) of this section) merely because those amounts are not includible in the individual's gross income on account of the location of the services. Similarly, compensation for services do not fail to be treated as compensation under paragraphs (b)(1) and (2) of this section (and are not excluded from the definition of compensation pursuant to paragraph (c)(4) of this section) merely because those amounts are paid by an employer with respect to which all compensation paid to the participant by such employer is excluded from gross income. Thus, for example, the determination of whether an amount is treated as compensation under paragraph (b)(1) or (2) of this section is made without regard to the exclusions from gross income under sections 872, 893, 894, 911, 931, and 933.

(ii) *Exclusion of non-participant compensation by the plan.* With respect to a nonresident alien who is not a participant in a plan, the plan may provide that the compensation described in paragraph (g)(5)(i) of this section is not treated as compensation for purposes of paragraphs (b)(1) and (b)(2) of this section to the extent the

compensation is excludable from gross income and is not effectively connected with the conduct of a trade or business within the United States, but only if the plan applies this rule uniformly to all such employees. For purposes of this paragraph (g)(5)(ii), nonresident alien has the same meaning as in section 7701(b)(1)(B).

(6) *Deemed section 125 compensation*—(i) *General rule.* A plan is permitted to provide that deemed section 125 compensation (as defined in paragraph (g)(6)(ii) of this section) is compensation within the meaning of section 415(c)(3), but only if the plan applies this rule uniformly to all employees with respect to whom amounts subject to section 125 are included in compensation.

(ii) *Definition of deemed section 125 compensation.* Deemed section 125 compensation is an amount that is excludable from the income of the participant under section 106 that is not available to the participant in cash in lieu of group health coverage under a section 125 arrangement solely because that participant is not able to certify that the participant has other health coverage. Under this definition, amounts are deemed section 125 compensation only if the employer does not otherwise request or collect information regarding the participant's other health coverage as part of the enrollment process for the health plan.

(7) *Employees in qualified military service.* See section 414(u)(7) for special rules regarding compensation of employees who are in qualified military service within the meaning of section 414(u)(5).

(8) *Back pay.* Payments awarded by an administrative agency or court or pursuant to a bona fide agreement by an employer to compensate an employee for lost wages are compensation within the meaning of section 415(c)(3) for the limitation year to which the back pay relates, but only to the extent such payments represent wages and compensation that would otherwise be included in compensation under this section.

**Par. 13.** Section 1.415(d)–1 is added to read as follows:

**§ 1.415(d)–1 Cost of living adjustments.**

(a) *Defined benefit plans*—(1) *Dollar limitation*—(i) *Determination of adjusted limit.* Under section 415(d)(1)(A), the dollar limitation described in section 415(b)(1)(A) applicable to defined benefit plans is adjusted annually to take into account increases in the cost of living. The adjustment of the dollar limitation is

made by multiplying the adjustment factor for the year, as described in paragraph (a)(1)(ii)(A) of this section, by \$160,000, and rounding the result in accordance with paragraph (a)(1)(iii) of this section. The adjusted dollar limitation is prescribed by the Commissioner and published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter.

(ii) *Determination of adjustment factor*—(A) *Adjustment factor.* The adjustment factor for a calendar year is equal to a fraction, the numerator of which is the value of the applicable index for the calendar quarter ending September 30 of the preceding calendar year, and the denominator of which is the value of such index for the base period. The applicable index is determined consistent with the procedures used to adjust benefit amounts under section 215(i)(2)(A) of the Social Security Act, Public Law 92–336 (86 Stat. 406), as amended. If, however, the value of that fraction is less than one for a calendar year, then the adjustment factor for the calendar year is equal to one.

(B) *Base period.* For the purpose of adjusting the dollar limitation pursuant to paragraph (a)(1)(ii)(A) of this section, the base period is the calendar quarter beginning July 1, 2001.

(iii) *Rounding.* Any increase in the \$160,000 amount specified in section 415(b)(1)(A) which is not a multiple of \$5,000 is rounded to the next lowest multiple of \$5,000.

(2) *Average compensation for high-3 years of service limitation*—(i) *Determination of adjusted limit.* Under section 415(d)(1)(B), with regard to participants who have had a severance from employment with the employer maintaining the plan, the compensation limitation described in section 415(b)(1)(B) is permitted to be adjusted annually to take into account increases in the cost of living. For any limitation year beginning after the severance occurs, the adjustment of the compensation limitation is made by multiplying the annual adjustment factor (as defined in paragraph (a)(2)(ii) of this section) by the compensation limitation applicable to the participant in the prior limitation year. The annual adjustment factor is prescribed by the Commissioner and published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter.

(ii) *Annual adjustment factor.* The annual adjustment factor for a calendar year is equal to a fraction, the numerator of which is the value of the applicable index for the calendar quarter ending September 30 of the preceding calendar year, and the denominator of which is

the value of such index for the calendar quarter ending September 30 of the calendar year prior to that preceding calendar year. The applicable index is determined consistent with the procedures used to adjust benefit amounts under section 215(i)(2)(A) of the Social Security Act. If the value of the fraction described in the first sentence of this paragraph (a)(2)(ii) is less than one for a calendar year, then the adjustment factor for the calendar year is equal to one. In such a case, the annual adjustment factor for future calendar years will be determined in accordance with revenue rulings, notices, or other published guidance prescribed by the Commissioner and published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter.

(iii) *Special rule for rehired employees.* If, after having a severance from employment with the employer maintaining the plan, an employee is rehired by the employer maintaining the plan, the employee's compensation limit under section 415(b)(1)(B) is the greater of—

(A) 100 percent of the participant's average compensation for the period of the participant's high-3 years of service, as determined prior to the employee's severance from employment with the employer maintaining the plan, as adjusted pursuant to paragraph (a)(2)(i) of this section (if the plan so provides); or

(B) 100 percent of the participant's average compensation for the period of the participant's high-3 years of service, with the period of the participant's high-3 years of service determined pursuant to § 1.415(b)–1(a)(5)(iii).

(3) *Effective date of adjustment.* The adjusted dollar limitation applicable to defined benefit plans and the adjusted compensation limit applicable to a participant are effective as of January 1 of each calendar year and apply with respect to limitation years ending with or within that calendar year. However, benefit payments (and, in the case of plans that are subject to the requirements of section 411, accrued benefits for a limitation year) cannot exceed the currently applicable dollar limitation or compensation limitation (as in effect before the January 1 adjustment) prior to January 1. Thus, where there is an increase in the limitation under section 415(b)(1), any increase in a participant's benefits associated with the limitation increase is permitted to occur as of a date no earlier than January 1 of the calendar year for which the increase in the limitation is effective, and can only be applied for payments due on or after

January 1 of such calendar year. For example, assume that a participant in a defined benefit plan is currently receiving a benefit in the form of a straight life annuity, payable monthly, in an amount equal to the section 415(b)(1)(A) dollar limit, and the defined benefit plan has a limitation year that runs from July 1 to June 30. If the plan is amended to reflect the section 415(d) increase to the section 415(b)(1)(A) dollar limit that is effective as of January 1, 2009, the associated increase in the participant's monthly benefit payments is only effective for payments due on or after January 1, 2009, and the participant's benefit cannot be increased to reflect the section 415(d) increase that is effective January 1, 2009, with respect to any monthly payment due prior to January 1, 2009.

(4) *Application of adjusted figure*—(i) *In general.* If the dollar limitation of section 415(b)(1)(A) or the compensation limitation of section 415(b)(1)(B) is adjusted pursuant to section 415(d) for a limitation year, the adjustment is applied as provided in this paragraph (a)(4).

(ii) *Application of adjusted limitations to benefits that have not commenced.* An adjustment to the dollar limitation of section 415(b)(1)(A) is permitted to be applied to a participant who has not commenced benefits before the date on which the adjustment is effective. Annual adjustments to the compensation limit of section 415(b)(1)(B) as described in paragraph (a)(2) of this section are permitted to be made for all limitation years that begin after the participant's severance from employment, and apply to distributions that commence after the effective dates of such adjustments. However, no adjustment to the compensation limit of section 415(b)(1)(B) is made for any limitation year that begins on or before the date of the participant's severance from employment with the employer maintaining the plan.

(iii) *Application of adjusted dollar limitation to remaining payments under benefits that have commenced.* With respect to a distribution of accrued benefits that commenced before the date on which an adjustment to the section 415(b)(1)(A) dollar limitation is effective, a plan is permitted to apply the adjusted limitations to that distribution, but only to the extent that benefits have not been paid. Thus, for example, a plan cannot provide that the adjusted dollar limitation applies to a participant who has previously received the entire plan benefit in a single-sum distribution. However, a plan can

provide for an increase in benefits to a participant who accrues additional benefits under the plan that could have been accrued without regard to the adjustment of the dollar limitation (including benefits that accrue as a result of a plan amendment) on or after the effective date of the adjusted limitation.

(iv) *Manner of adjustment for benefits that have commenced.* If a plan is amended to increase benefits payable under the plan in accordance with paragraphs (a)(5) or (a)(6) of this section (or the plan is treated as applying paragraph (a)(5) of this section because the plan incorporates the section 415(d) cost-of-living adjustments automatically by reference pursuant to § 1.415(a)-1(d)(3)(v)), or if benefits payable under the plan are increased pursuant to a form of benefit that is described in § 1.415(b)-1(c)(5), then the distribution as increased will be treated as continuing to satisfy the requirements of section 415(b). If benefits payable under a plan are increased in a manner other than as described in the preceding sentence, the plan must satisfy the requirements of § 1.415(b)-1(b)(1)(iii), treating the commencement of the additional benefit as the commencement of a new distribution that gives rise to a new annuity starting date.

(5) *Safe harbor for annual adjustments to distributions.* An amendment to a plan to incorporate adjustments to the section 415(b) limits that increases a distribution that has previously commenced is described in this paragraph (a)(5) if—

(i) The employee has received one or more distributions that satisfy the requirements of section 415(b) before the date the adjustment to the applicable limits is effective (as determined under paragraph (a)(3) of this section);

(ii) The increased distribution is solely as a result of the amendment of the plan to reflect the adjustment to the applicable limits pursuant to section 415(d); and

(iii) The amounts payable to the employee on and after the effective date of the adjustment (as determined under paragraph (a)(3) of this section) are not greater than the amounts that would otherwise be payable without regard to the adjustment, multiplied by a fraction determined for the limitation year, the numerator of which is the limitation under section 415(b) (which is the lesser of the applicable dollar limitation under section 415(b)(1)(A), as adjusted for age at commencement, and the applicable compensation-based limitation under section 415(b)(1)(B)) in effect with respect to the distribution taking into

account the section 415(d) adjustment, and the denominator of which is the limitation under section 415(b) in effect for the distribution immediately before the adjustment.

(6) *Safe harbor for periodic adjustments to distributions*—(i) *General rule.* An amendment to a plan that increases a distribution that has previously commenced is made using the safe harbor methodology of this paragraph (a)(6) if—

(A) The employee has received one or more distributions that satisfy the requirements of section 415(b) before the date on which the increase is effective; and

(B) The amounts payable to the employee on and after the effective date of the increase are not greater than the amounts that would otherwise be payable without regard to the increase, multiplied by the cumulative adjustment fraction.

(ii) *Cumulative adjustment fraction.* The cumulative adjustment fraction for purposes of this paragraph (a)(6) is equal to the product of all of the fractions described in paragraph (a)(5)(iii) of this section that would have applied after benefits commence if the plan had been amended each year to incorporate the section 415(d) adjustments to the applicable section 415(b) limits and had otherwise satisfied the safe harbor methodology described in paragraph (a)(5) of this section. For purposes of the preceding sentence, if for the limitation year for which the increase to the section 415(b)(1)(A) dollar limitation pursuant to section 611(a)(1)(A) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (115 Stat. 38), Public Law 107-16 (EGTRRA), is first effective (generally, the first limitation year beginning after December 31, 2001), the section 415(b)(1)(A) dollar limit applicable to a participant is less than the section 415(b)(1)(B) compensation limit for the participant, then the fraction described in paragraph (a)(5)(iii) of this section for that limitation year is 1.0.

(7) *Examples.* The following examples illustrate the application of this paragraph (a):

*Example 1.* (i) X is a participant in a qualified defined benefit plan maintained by X's employer. The plan has a calendar year limitation year. Under the terms of the plan, X is entitled to a benefit consisting of a straight life annuity equal to 100 percent of X's average compensation for the period of X's high-3 years of service. X's average compensation for the period of X's high-3 years of service is \$50,000. X incurs a severance from employment with the employer maintaining the plan on October 3,

2007, at age 65 with a nonforfeitable right to the accrued benefit after more than 10 years of participation in the plan. X begins to receive annual benefit payments (payable monthly) of \$50,000, commencing on November 1, 2007. The dollar limitation for the 2007 limitation year (as adjusted pursuant to section 415(d)) is \$180,000. Assume that the dollar limitation for the 2008 limitation year (as adjusted pursuant to section 415(d)) is \$185,000 and the annual adjustment factor for adjusting the compensation limitation of section 415(b)(1)(B) for the 2008 limitation year is 1.0334. Effective January 1, 2008, the plan is amended to incorporate these adjustments to the dollar and compensation limitations, and accordingly, X's annual benefit payment is increased, effective for payments due on or after January 1, 2008. Prior to the plan amendment incorporating the application of the adjusted dollar and compensation limitations, X has received one or more distributions that satisfy the requirements of section 415(b). In addition, the adjustment to X's annual benefit payments is solely on account of the plan amendment incorporating the adjusted limitations.

(ii) For the limitation year beginning January 1, 2008, the dollar limit applicable to X under section 415(b)(1)(A) is \$185,000, and the compensation limit applicable to X under section 415(b)(1)(B) is \$51,670 (\$50,000 multiplied by the annual adjustment factor of 1.0334). Accordingly, the adjustment to X's benefit satisfies the safe harbor for cost-of-living adjustments under paragraph (a)(5) of this section if, after the adjustment, X's benefit payable in the 2008 limitation year is no greater than \$50,000 multiplied by \$51,670 (X's section 415(b) limitation for 2008)/\$50,000 (X's section 415(b) limitation for 2007).

*Example 2.* (i) The facts are the same as in *Example 1*, except that X's average compensation for the period of X's high-3 consecutive years of service is \$200,000. Consequently, X's annual benefit payments commencing on November 1, 2007, are limited to \$180,000.

(ii) For the limitation year beginning January 1, 2008, the dollar limit applicable to X under section 415(b)(1)(A) is \$185,000, and the compensation limit applicable to X under section 415(b)(1)(B) is \$206,680 (\$200,000 multiplied by the annual adjustment factor of 1.0334). Accordingly, the adjustment to X's benefit satisfies the safe harbor for cost-of-living adjustments under paragraph (a)(5) of this section if, after the adjustment, X's benefit payable in 2008 is no greater than \$180,000 multiplied by \$185,000 (X's section 415(b) limitation for 2008)/\$180,000 (X's section 415(b) limitation for 2007).

*Example 3.* (i) X is a participant in Plan T, a qualified defined benefit plan maintained by X's employer. In the year 2008, X receives a single-sum distribution of X's entire accrued benefit under the plan. At the time that X receives the single-sum distribution, X's accrued benefit under Plan T is limited by the section 415(b)(1)(A) age-adjusted dollar limit. X accrues no further benefits under Plan T after X receives the single-sum distribution. In the 2009 limitation year, pursuant to section 415(d) and § 1.415(d)-1,

the section 415(b)(1)(A) dollar limit is increased.

(ii) In the 2009 limitation year, Plan T may not provide additional benefits to X on account of the increase in the section 415(b)(1)(A) dollar limit pursuant to section 415(d) and § 1.415(d)-1.

*Example 4.* (i) X is a participant in Plan T, a qualified defined benefit plan maintained by X's employer, Employer S. Plan T has a calendar limitation year. In 2008, X incurs a severance from employment with Employer S and X commences receiving distributions from Plan T in the form of a single life annuity in an annual amount of \$30,000. At the time that X commences receiving distributions from Plan T, X's accrued benefit under Plan T is limited by the section 415(b)(1)(B) compensation limit. In 2009, the annual adjustment factor described in paragraph (a)(2) of this section (which is the factor for adjusting the compensation limit described in section 415(b)(1)(B)) is 1.03. Employer S amends Plan T, effective as of January 1, 2009, to increase the annual benefit of all participants who, prior to January 1, 2009, incurred a severance from employment with Employer S and who have commenced receiving benefits from Plan T by a factor of 1.015. Assume that for limitation years prior to 2009, X's distributions from Plan T satisfy the requirements of section 415(b).

(ii) The increase in X's annual benefit pursuant to the amendment effective January 1, 2009, is within the safe harbor described in paragraph (a)(6) of this section. This is because the amount payable to X under Plan T for the 2009 limitation year and limitation years thereafter (as increased by the amendment effective January 1, 2009) is not greater than the product of the amount payable to X under Plan T for such limitation years (as determined without regard to the amendment increasing X's benefit effective January 1, 2009) and the cumulative adjustment fraction (which, in X's case, is 1.03). Thus, X's annual benefit, as increased by the amendment, is not determined pursuant to the rules of § 1.415(b)-1(b)(1)(iii).

*Example 5.* (i) Participant P participated in Plan A, maintained by Employer M, for more than 10 years. Plan A uses a calendar year limitation year and Plan A automatically adjusts a participant's section 415(b)(1)(B) compensation limit for limitation years after the limitation year in which the participant incurs a severance from employment as described in § 1.415(a)-1(d)(3)(v). Prior to separating from employment with M in 2010, P's average compensation for P's period of high-3 years while a participant in Plan A is \$50,000, based on P's compensation for 2007, 2008, and 2009, which was \$50,000 for each year. P's compensation for year 2010 was \$45,000. In year 2012, P is rehired by M and resumes participation in Plan A. P's compensation in year 2012 is \$45,000, and is \$70,000 in year 2013. Assume that the annual adjustment factor described in § 1.415(d)-1(a)(2)(ii) for the limitation years 2011 through 2013 is 1.03 for each year. Thus, disregarding P's rehire by M, P's average compensation for P's period of high-3 years while a participant in Plan A for the 2013 limitation year would be equal to \$54,636 (or

1.03 \* 1.03 \* 1.03 \* \$50,000). See § 1.415(b)-1(a)(5)(iii).

(ii) Under § 1.415(d)-1(a)(2)(iii), P's average compensation for P's period of high-3 years while a participant in Plan A for the 2013 limitation year is \$54,636.

(b) *Defined contribution plans*—(1) *In general.* Under section 415(d)(1)(C), the dollar limitation described in section 415(c)(1)(A) is adjusted annually to take into account increases in the cost of living. The adjusted dollar limitation is prescribed by the Commissioner and published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter.

(2) *Determination of adjusted limit*—(i) *Base period.* The base period taken into account for purposes of adjusting the dollar limitation pursuant to paragraph (b)(2)(ii) of this section is the calendar quarter beginning July 1, 2001.

(ii) *Method of adjustment*—(A) *In general.* The dollar limitation is adjusted with respect to a calendar year based on the increase in the applicable index for the calendar quarter ending September 30 of the preceding calendar year over such index for the base period. Adjustment procedures similar to the procedures used to adjust benefit amounts under section 215(i)(2)(A) of the Social Security Act will be used.

(B) *Rounding.* Any increase in the \$40,000 amount specified in section 415(c)(1)(A) which is not a multiple of \$1,000 shall be rounded to the next lowest multiple of \$1,000.

(iii) *Effective date of adjustment.* The adjusted dollar limitation applicable to defined contribution plans is effective as of January 1 of each calendar year and applies with respect to limitation years ending with or within that calendar year. Annual additions for a limitation year cannot exceed the currently applicable dollar limitation (as in effect before the January 1 adjustment) prior to January 1. However, after a January 1 adjustment is made, annual additions for the entire limitation year are permitted to reflect the dollar limitation as adjusted on January 1.

(c) *Application of rounding rules to other cost-of-living adjustments.* Pursuant to section 415(d)(4)(A), the \$5,000 rounding methodology of paragraph (a)(1)(iii) of this section is used for purposes of any provision of chapter 1 of subtitle A of the Internal Revenue Code that provides for adjustments in accordance with section 415(d), except to the extent provided by that provision. Thus, the \$5,000 rounding methodology of paragraph (a)(1)(iii) of this section is used for purposes of—

(1) Determining the level of compensation specified in section 414(q)(1)(B) that is used to determine whether an employee is a highly compensated employee;

(2) Calculating the amounts used pursuant to section 409(o)(1)(C) to determine the maximum period over which distributions from an employee stock ownership plan may be made without participant consent; and

(3) Determining the levels of compensation specified in § 1.61-21(f)(5)(i) and (iii) used in determining whether an employee is a control employee of a nongovernmental employer for purposes of the commuting valuation rule of § 1.61-21(f).

(d) *Implementation of cost-of-living adjustments.* A plan is permitted to be amended to reflect any of the adjustments described in this section at any time after those limitations become applicable. Alternatively, a plan is permitted to incorporate by reference any of the adjustments described in this section in accordance with the rules of § 1.415(a)–1(d)(3)(v). Because the accrued benefit of a participant can reflect increases in the applicable limitations only after those increases become effective, a pattern of repeated plan amendments increasing annual benefits to reflect the increases in the section 415(b) limitations pursuant to section 415(d) does not result in any protection under section 411(d)(6) for future increases to reflect increases in the section 415(b) limitations pursuant to § 1.411(d)–4, Q&A–1(c)(1). Thus, a plan does not violate the requirements of section 411(d)(6) merely because the plan has been amended annually for a number of years to increase annual benefits to reflect the increases in the section 415(b) limitations pursuant to section 415(d) and subsequently is not amended to reflect later increases in the section 415(b) limitations.

**Par. 14.** Section 1.415(f)–1 is added to read as follows:

**§ 1.415(f)–1 Aggregating plans.**

(a) *In general.* Except as provided in paragraph (g) of this section (regarding multiemployer plans), and taking into account the rules of paragraph (b)(2) (regarding the break-up of affiliated employers and affiliated service groups), paragraph (c) (regarding predecessor employers), and paragraph (d)(1) (regarding nonduplication rules) of this section, section 415(f) and this section require that for purposes of applying the limitations of sections 415(b) and (c) applicable to a participant for a particular limitation year—

(1) All defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the employer (or a predecessor employer within the meaning of paragraphs (c)(1) and (c)(2) of this section) under which the participant has accrued a benefit are treated as one defined benefit plan;

(2) All defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the employer (or a predecessor employer within the meaning of paragraphs (c)(1) and (c)(2) of this section) under which the participant receives annual additions are treated as one defined contribution plan; and

(3) All section 403(b) annuity contracts purchased by an employer (including plans purchased through salary reduction contributions) for the participant are treated as one section 403(b) annuity contract.

(b) *Affiliated employers, affiliated service groups, and leased employees—*

(1) *General rule.* See § 1.415(a)–1(f)(1) and (2) for rules regarding aggregation of employers in the case of affiliated employers and affiliated service groups. See § 1.415(a)–1(f)(3) for rules regarding the treatment of leased employees.

(2) *Special rule in the case of the break-up of an affiliated employer or an affiliated service group—(i) In general.* A formerly affiliated plan of an employer is taken into account for purposes of applying paragraph (a) of this section to the employer, but the formerly affiliated plan is treated as if it had terminated immediately prior to the cessation of affiliation with sufficient assets to pay benefit liabilities under the plan, and had purchased annuities to provide plan benefits. See § 1.415(b)–1(b)(5)(i) for rules determining annual benefits under a terminated defined benefit plan under which annuities are purchased to provide plan benefits.

(ii) *Definitions.* For purposes of this paragraph (b)(2), a *formerly affiliated plan of an employer* is a plan that, immediately prior to the cessation of affiliation, was actually maintained by one or more of the entities that constitute the employer (as determined under the employer affiliation rules described in § 1.415(a)–1(f)(1) and (2)), and immediately after the cessation of affiliation, is not actually maintained by any of the entities that constitute the employer (as determined under the employer affiliation rules described in § 1.415(a)–1(f)(1) and (2)). For purposes of this paragraph (b)(2), a *cessation of affiliation* means the event that causes an entity to no longer be aggregated with one or more other entities as a single employer under the employer affiliation rules described in § 1.415(a)–1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the employer under the employer affiliation rules of § 1.415(a)–1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

(c) *Predecessor employer—(1) Where plan is maintained by successor.* For purposes of section 415 and regulations promulgated under section 415, a former employer is a predecessor employer with respect to a participant in a plan maintained by an employer if the employer maintains a plan under which the participant had accrued a benefit while performing services for the former employer (for example, the employer assumed sponsorship of the former employer's plan, or the employer's plan received a transfer of benefits from the former employer's plan), but only if that benefit is

provided under the plan maintained by the employer. In such a case, in applying the limitations of section 415 to a participant in a plan maintained by the employer, paragraph (a) of this section requires the plan to take into account benefits provided to the participant under plans that are maintained by the predecessor employer and that are not maintained by the employer. For this purpose, the formerly affiliated plan rules in paragraph (b)(2) of this section apply as if the employer and predecessor employer constituted a single employer under the rules described in § 1.415(a)–1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in § 1.415(a)–1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor employer relationship, such as a transfer of benefits or plan sponsorship.

(2) *Where plan is not maintained by successor.* With respect to an employer of a participant, a former entity that antedates the employer is a predecessor employer with respect to the participant if, under the facts and circumstances, the employer constitutes a continuation of all or a portion of the trade or business of the former entity. This will occur, for example, where formation of the employer constitutes a mere formal or technical change in the employment relationship and continuity otherwise exists in the substance and administration of the business operations of the former entity and the employer.

(d) *Special rules—(1) Nonduplication.* In applying the limitations of section 415 to a plan maintained by an employer, if the plan is aggregated with another plan pursuant to the aggregation rules of paragraph (a) of this section, a participant's benefits are not counted more than once in determining the participant's aggregate annual benefit or annual additions. For example, if a defined benefit plan is treated as if it terminated immediately prior to a cessation of affiliation under paragraph (b)(2) of this section, the plans maintained by the employer (as determined after the cessation of affiliation) that actually maintains the plan do not double count the annual benefit provided under the plan by aggregating under paragraph (a) of this section both the participant's annual benefit provided under the plan and the participant's annual benefit under the plan as a formerly affiliated plan (which is a plan that the employers formerly affiliated with the employer must take

into account as a terminated plan under the rules of paragraph (b)(2) of this section). Instead, the plans maintained by the employer include the annual benefit provided to the participant under the actual plan that the employer maintains. Similarly, if a defined benefit plan maintained by an employer (the transferee plan) receives a transfer of benefits from a defined benefit plan maintained by a predecessor employer (the transferor plan) and the transfer is described in § 1.415(b)-1(b)(3)(i)(B) (which requires the transferred benefits to be treated by the transferor plan as if the benefits were provided under a plan that must be aggregated with the transferor plan that terminated immediately prior to the transfer), the transferee plan does not double count the transferred benefits under paragraph (a) of this section by taking into account both the actual benefit provided under the transferee plan and the benefit provided under the deemed terminated plan that the predecessor employer is treated as maintaining (and that otherwise would have to be taken into account by the transferee plan under the predecessor employer aggregation rules of paragraph (a) of this section). Instead, the transferee plan takes into account the transferred benefits that are actually provided under transferee plan (see § 1.415(b)-1(b)(3)(i)(C)) and, pursuant to paragraph (c)(1) of this section, any nontransferred benefits provided under plans maintained by the predecessor employer with respect to a participant whose benefits have been transferred to the transferee plan.

(2) *Determination of years of participation for multiple plans.* If two or more defined benefit plans are aggregated under section 415(f) and this section for a particular limitation year, in applying the reduction for participation of less than ten years (as described in section 415(b)(5)(A)) to the dollar limitation under section 415(b)(1)(A), time periods that are counted as years of participation under any of the plans are counted in computing the limitation of the aggregated plans under this section.

(3) *Determination of years of service for multiple plans.* If two or more defined benefit plans are aggregated under section 415(f) and this section for a particular limitation year, in applying the reduction for service of less than ten years (as described in section 415(b)(5)(B)) to the compensation limitation under section 415(b)(1)(B), time periods that are counted as years of service under any of the plans are counted in computing the limitation of the aggregated plans under this section.

(e) *Previously unaggregated plans—*  
 (1) *In general.* This paragraph (e) provides rules for those situations in which two or more existing plans, which previously were not required to be aggregated pursuant to section 415(f) and this section, are aggregated during a particular limitation year and, as a result, the limitations of section 415(b) or (c) are exceeded for that limitation year. Paragraph (e)(2) of this section provides rules for defined contribution plans that are first required to be aggregated pursuant to section 415(f) and this section in a plan year. Paragraph (e)(3) of this section provides rules for defined benefit plans that are first required to be aggregated pursuant to section 415(f) and this section, and for defined benefit plans under which a participant's benefit is frozen following aggregation.

(2) *Defined contribution plans.* Two or more defined contribution plans that are not required to be aggregated pursuant to section 415(f) and this section as of the first day of a limitation year do not fail to satisfy the requirements of section 415 with respect to a participant for the limitation year merely because they are aggregated later in that limitation year, provided that no annual additions are credited to the participant's account after the date on which the plans are required to be aggregated.

(3) *Defined benefit plans—*(i) *First year of aggregation.* Two or more defined benefit plans that are not required to be aggregated pursuant to section 415(f) and this section as of the first day of a limitation year do not fail to satisfy the requirements of section 415 for the limitation year merely because they are aggregated later in that limitation year, provided that no plan amendments increasing benefits with respect to the participant under either plan are made after the occurrence of the event causing the plan to be aggregated.

(ii) *All years of aggregation in which accrued benefits are frozen.* Two or more defined benefit plans that are required to be aggregated pursuant to section 415(f) and this section during a limitation year subsequent to the limitation year during which the plans were first aggregated do not fail to satisfy the requirements of section 415 with respect to a participant for the limitation year merely because they are aggregated if there have been no increases in the participant's accrued benefit derived from employer contributions (including increases as a result of increased compensation or service) under any of the plans within

the period during which the plans have been aggregated.

(f) *Section 403(b) annuity contracts—*  
 (1) *In general.* In the case of a section 403(b) annuity contract, except as provided in paragraph (f)(2) of this section, the participant on whose behalf the annuity contract is purchased is considered for purposes of section 415 to have exclusive control of the annuity contract. Accordingly, except as provided in paragraph (f)(2) of this section, the participant, and not the participant's employer who purchased the section 403(b) annuity contract, is deemed to maintain the annuity contract, and such a section 403(b) annuity contract is not aggregated with a qualified plan that is maintained by the participant's employer.

(2) *Special rules under which the employer is deemed to maintain the annuity contract—*(i) *In general.* Where a participant on whose behalf a section 403(b) annuity contract is purchased is in control of any employer for a limitation year as defined in paragraph (f)(2)(ii) of this section (regardless of whether the employer controlled by the participant is the employer maintaining the section 403(b) annuity contract), the annuity contract for the benefit of the participant is treated as a defined contribution plan maintained by both the controlled employer and the participant for that limitation year. Accordingly, where a participant on whose behalf a section 403(b) annuity contract is purchased is in control of any employer for a limitation year, the section 403(b) annuity contract is aggregated with all other defined contribution plans maintained by that employer. In addition, in such a case, the section 403(b) annuity contract is aggregated with all other defined contribution plans maintained by the employee or any other employer that is controlled by the employee. Thus, for example, if a doctor is employed by a non-profit hospital to which section 501(c)(3) applies and which provides him with a section 403(b) annuity contract, and the doctor also maintains a private practice as a shareholder owning more than 50 percent of a professional corporation, then any qualified defined contribution plan of the professional corporation must be aggregated with the section 403(b) annuity contract for purposes of applying the limitations of section 415(c) and § 1.415(c)-1. For purposes of this paragraph (f)(2), it is immaterial whether the section 403(b) annuity contract is purchased as a result of a salary reduction agreement between the employer and the participant.

(ii) *Determination of when a participant is in control of an employer.* For purposes of paragraph (f)(2)(i) of this section, a participant is in control of an employer for a limitation year if, pursuant to § 1.415(a)-1(f)(1) and (2), a plan maintained by that employer would have to be aggregated with a plan maintained by an employer that is 100 percent owned by the participant. Thus, for example, if a participant owns 60 percent of the common stock of a corporation, the participant is considered to be in control of that employer for purposes of applying paragraph (f)(2)(i) of this section.

(3) *Aggregation of section 403(b) annuity with qualified plan of controlled employer.* If a section 403(b) annuity contract is aggregated with a qualified plan of a controlled employer in accordance with paragraph (f)(2) of this section, the plans must satisfy the limitations of section 415(c) both separately and on an aggregate basis. In applying separately the limitations of section 415 to the qualified plan and to the section 403(b) annuity contract, compensation from the controlled employer may not be aggregated with compensation from the employer purchasing the section 403(b) annuity contract (that is, without regard to § 1.415(c)-2(g)(3)).

(g) *Multiemployer plans—(1) Multiemployer plan aggregated with another multiemployer plan.* Pursuant to section 415(f)(3)(B), multiemployer plans, as defined in section 414(f), are not aggregated with other multiemployer plans for purposes of applying the limits of section 415.

(2) *Multiemployer plan aggregated with other plan—(i) Aggregation only for benefits provided by the employer.* Notwithstanding the rule of § 1.415(a)-1(e), a multiemployer plan, as defined in section 414(f), is permitted to provide that only the benefits under that multiemployer plan that are provided by an employer are aggregated with benefits under plans maintained by that employer that are not multiemployer plans. If the multiemployer plan so provides, then, where an employer maintains both a plan which is not a multiemployer plan and a multiemployer plan, only the benefits under the multiemployer plan that are provided by the employer are aggregated with benefits under the employer's plans other than multiemployer plans (in lieu of including benefits provided by all employers under the multiemployer plan pursuant to the generally applicable rule of § 1.415(a)-1(e)).

(ii) *Exception from aggregation for purposes of applying section*

*415(b)(1)(B) compensation limit.* Pursuant to section 415(f)(3)(A), a multiemployer plan, as defined in section 414(f), is not aggregated with any other plan that is not a multiemployer plan for purposes of applying the compensation limit of section 415(b)(1)(B) and § 1.415(b)-1(a)(1)(ii).

(h) *Special rules for aggregating certain plans, etc.* If a plan, annuity contract or arrangement is subject to a special limitation in addition to, or instead of, the regular limitations described in section 415(b) or (c), and is aggregated under this section with a plan which is subject to the regular section 415(b) or (c) limitations, the following rules apply:

(1) Each plan, annuity contract or arrangement which is subject to a special limitation must meet its own applicable limitation and each plan subject to the regular limitations of section 415 must meet its applicable limitation.

(2) The limitation for the aggregated plans is the larger of the applicable limitations for the separate plans.

(i) [Reserved.]

(j) *Examples.* The following examples illustrate the rules of this section. Except to the extent otherwise stated in an example, each entity is not and has never been affiliated with another entity under the employer affiliation rules of § 1.415(a)-1(f)(1) and (2), each entity has never maintained a qualified plan (other than the plans specifically mentioned in the example), and the limitation year for each qualified plan is the calendar year.

*Example 1.* (i) *Facts.* M was formerly an employee of ABC Corporation and is currently an employee of XYZ Corporation. ABC maintains a qualified defined benefit plan (Plan ABC) and a qualified defined contribution plan in which M participates and XYZ maintains a qualified defined benefit plan (Plan XYZ) and a qualified defined contribution plan in which M participates. ABC Corporation owns 60 percent of XYZ Corporation.

(ii) *Treatment as a single employer.* ABC Corporation and XYZ Corporation are members of a controlled group of corporations within the meaning of section 414(b) as modified by section 415(h). Because ABC Corporation and XYZ Corporation are members of a controlled group of corporations within the meaning of section 414(b) as modified by section 415(h), M is treated as being employed by a single employer under § 1.415(a)-1(f)(1).

(iii) *Plan aggregation.* Under paragraph (a)(1) of this section, the sum of M's annual benefit under Plan ABC and M's annual benefit under Plan XYZ is not permitted to exceed the limitations of section 415(b) and § 1.415(b)-1; and, under paragraph (a)(2) of this section, the sum of the annual additions to M's account under the defined

contribution plans maintained by ABC and XYZ may not exceed the limitations of section 415(c) and § 1.415(c)-1. For purposes of determining the limitations of section 415(b) and § 1.415(b)-1 for the aggregated plans, a year of service for either employer is considered as a year of service for purposes of § 1.415(b)-1(g)(2) (phase-in rules for the compensation limit) and a year of participation under either plan is considered as a year of participation for purposes of § 1.415(b)-1(g)(1) (phase-in rules for the dollar limit).

*Example 2.* (i) *Facts.* The facts are the same as in *Example 1*, except that ABC Corporation and XYZ Corporation do not maintain defined contribution plans. In addition, Participant O was formerly an employee of ABC Corporation and is currently an employee of XYZ Corporation. Participant O has an accrued benefit under the ABC Plan, but Participant O has no accrued benefit under the XYZ Plan. Effective January 1, 2010, ABC Corporation sells all of its shares of stock of XYZ Corporation to an unaffiliated entity, LMN Corporation (the 2010 stock sale). After the 2010 stock sale, XYZ Corporation continues to maintain Plan XYZ. LMN Corporation maintains a qualified defined benefit plan (Plan LMN). After the 2010 stock sale, M begins to accrue benefits under Plan LMN, but O does not participate in Plan LMN.

(ii) *Affiliated employer status of the corporations.* Immediately after the 2010 stock sale, ABC Corporation and XYZ Corporation are no longer members of a controlled group of corporations under section 414(b) (as modified by section 414(h)) and accordingly are no longer treated as a single employer under the employer affiliation rules of § 1.415(a)-1(f)(1). Immediately after the 2010 stock sale, LMN Corporation and XYZ Corporation are members of a controlled group of corporations under section 414(b) (as modified by section 414(h)) and accordingly are treated as a single employer under the employer affiliation rules of § 1.415(a)-1(f)(1).

(iii) *Treatment of plans maintained by ABC Corporation after the 2010 stock sale.* Under § 1.415(a)-1(f)(1), any plan maintained by any member of a controlled group of corporations is deemed maintained by all members of the controlled group, and paragraph (a)(1) of this section requires that, for purposes of applying the limitations of section 415(b), all defined benefit plans ever maintained by an employer (as determined under the affiliation rules of § 1.415(a)-1(f)(1) and (2)) are treated as one defined benefit plan. Therefore, defined benefit plans maintained by ABC Corporation must take into account the annual benefit of a participant provided under Plan XYZ in applying the limitations of section 415(b) to the participant because Plan XYZ is a plan that had once been maintained by ABC Corporation. However, beginning with the 2010 limitation year, the aggregation of the annual benefit accrued by a participant under Plan XYZ for purposes of testing defined benefit plans maintained by ABC Corporation is limited to the annual benefit accrued by the participant under Plan XYZ immediately

prior to the 2010 stock sale. This is because paragraph (b)(2)(i) of this section provides that a formerly affiliated plan of an employer is treated as if it had terminated immediately prior to the cessation of affiliation with sufficient assets to pay benefit liabilities under the plan, and had purchased annuities to provide plan benefits. The 2010 stock sale is a cessation of affiliation under paragraph (b)(2)(ii) of this section because this event caused XYZ Corporation to no longer be affiliated with ABC Corporation under the employer affiliation rules of § 1.415(a)-1(f)(1) and (2). Immediately after the 2010 stock sale, Plan XYZ is a formerly affiliated plan with respect to ABC Corporation under paragraph (b)(2)(ii) of this section because immediately prior to the cessation of affiliation, Plan XYZ was actually maintained by XYZ Corporation (which together with ABC Corporation constituted a single employer under the employer affiliation rules of § 1.415(a)-1(f)(1) and (2)), and immediately after the cessation of affiliation, Plan XYZ is not actually maintained by ABC Corporation or any other entity affiliated with it.

(iv) *Application of rules to Participants M and O with respect to plans maintained by ABC Corporation after the 2010 stock sale.* In applying the limitations of section 415(b) to Participant M for the 2010 limitation year and later limitation years, Plan ABC must take into account the annual benefit provided under Plan ABC to Participant M and the annual benefit provided under Plan XYZ to Participant M, but treating Plan XYZ as if it had terminated immediately prior to the 2010 stock sale with sufficient assets to pay benefit liabilities under the plan, and had purchased annuities to provide plan benefits. The aggregation of Plan XYZ with Plan ABC is irrelevant for purposes of Participant O because Participant O does not have any accrued benefit under Plan XYZ (as determined prior to the 2010 stock sale).

(v) *Treatment of plans maintained by LMN Corporation and XYZ Corporation after the 2010 stock sale.* Under § 1.415(a)-1(f)(1) and paragraph (a)(1) of this section, when applying the limitations of section 415(b) to a participant under Plans LMN and XYZ for the 2010 limitation year and later years, the annual benefit provided to the participant under Plans LMN, XYZ and ABC must be aggregated. Benefits under Plan ABC must be included in this aggregation because XYZ Corporation is deemed to have once maintained Plan ABC pursuant to § 1.415(a)-1(f)(1), and since LMN Corporation and XYZ Corporation constitute a single employer under § 1.415(a)-1(f)(1), paragraph (a)(1) of this section requires the aggregation of all defined benefit plans ever maintained by LMN Corporation and XYZ Corporation. However, in performing this aggregation, a participant's annual benefit under Plan ABC is limited to the annual benefit accrued by the participant immediately prior to the 2010 stock sale. This is because, pursuant to paragraph (b)(2)(i) of this section, Plan ABC is a formerly affiliated plan of LMN Corporation and XYZ Corporation.

(vi) *Application of rules to Participants M and O with respect to plans maintained by LMN Corporation and XYZ Corporation after*

*the 2010 stock sale.* In applying the limitation of section 415(b) to Participant M for the 2010 limitation year and later limitation years, Plan LMN and Plan XYZ must take into account the annual benefit provided under Plans LMN and XYZ to Participant M and the annual benefit provided under Plan ABC to Participant M as if Plan ABC had terminated immediately prior to the 2010 stock sale with sufficient assets to pay benefit liabilities under the plan, and had purchased annuities to provide plan benefits. Participant O does not have an accrued benefit under Plan LMN or Plan XYZ, so the aggregation of Plan ABC with Plans LMN and XYZ is currently irrelevant with respect to Participant O. However, if Participant O were to ever participate in Plans LMN or XYZ after the 2010 stock sale, Participant O's annual benefit under Plan ABC (determined as if Plan ABC terminated immediately prior to the 2010 stock sale) would have to be aggregated with any annual benefit that Participant O accrues under Plan LMN or Plan XYZ.

(vii) *Application of nonduplication rule.* In applying paragraph (a)(1) of this section to plans maintained by ABC Corporation after 2010 stock sale, plans maintained by ABC Corporation do not take into account the deemed termination of Plan ABC since ABC Corporation maintains Plan ABC after the cessation of affiliation. Similarly, in applying paragraph (a)(1) of this section to plans maintained by LMN Corporation and XYZ Corporation after the 2010 stock sale, plans maintained by LMN Corporation and XYZ Corporation do not take into account the deemed termination of Plan XYZ since XYZ Corporation maintains Plan XYZ after the cessation of affiliation. See paragraph (d)(1) of this section.

*Example 3. (i) Facts.* The facts are the same as in *Example 2*, except that on January 1, 2009, Plan ABC transfers Participant M's benefit to Plan XYZ.

(ii) *Treatment of plans maintained by ABC Corporation.* Pursuant to § 1.415(b)-1(b)(3)(i)(A), M's benefit that is transferred from Plan ABC to Plan XYZ is not treated as being provided under Plan ABC for the limitation year in which the transfer occurs (2009). This is because M's transferred benefit is otherwise required to be taken into account by Plan ABC for the 2009 limitation year since Plan XYZ must be aggregated with Plan ABC pursuant to paragraph (a)(1) of this section. This result does not change for the 2010 limitation year and later limitation years, where pursuant to paragraph (b)(2)(i) of this section, Plan XYZ becomes a formerly affiliated plan with respect to ABC Corporation due to the 2010 stock sale. Under paragraph (b)(2)(i) of this section, Plan XYZ (the formerly affiliated plan) is treated from the perspective of plans maintained by ABC Corporation (Plan ABC) as if Plan XYZ terminated immediately prior to the 2010 stock sale with sufficient assets to pay benefit liabilities under the plan, and had purchased annuities to provide plan benefits. However, the pre-2010 stock sale benefits of Plan XYZ include the January 1, 2009, transfer of Participant M's benefit. Thus, in the 2010 limitation year, M's transferred benefit is still otherwise required to be taken into account

by Plan ABC on account of the aggregation of Plan XYZ with Plan ABC pursuant to paragraph (a)(1) of this section, and therefore the transferred benefit is not treated as being provided by Plan ABC.

(iii) *Treatment of plans maintained by LMN Corporation and XYZ Corporation.* Pursuant to § 1.415(b)-1(b)(3)(i)(C), Participant M's benefit that is transferred to Plan XYZ from Plan ABC must be treated as provided under Plan XYZ for purposes of applying the limitations of section 415 to Plan XYZ with respect to Participant M for the limitation year in which the transfer occurs and later years. This result does not change on account of the 2010 stock sale. When applying the limitation of section 415 to Plans LMN and XYZ for the 2010 limitation year and later years, Plans LMN and XYZ must aggregate the annual benefit provided to a participant under each plan along with the participant's benefit under Plan ABC pursuant to § 1.415(a)-1(f)(1) and paragraph (a)(1) of this section. However, under paragraph (b)(2)(i) of this section, for the 2010 limitation year and later years, this aggregation of M's Plan ABC benefit only includes the annual benefit attributable to a participant's accrued benefit under Plan ABC immediately prior to the 2010 stock sale, which (due to the 2009 transfer) is zero.

*Example 4. (i) Facts.* The facts are the same as in *Example 2*, except that on January 1, 2011, Plan ABC transfers Participant M's benefit to Plan XYZ.

(ii) *Treatment of plans maintained by ABC Corporation for the 2011 limitation year and later years.* Pursuant to § 1.415(b)-1(b)(3)(i)(B), M's benefit that is transferred from Plan ABC to Plan XYZ during the 2011 limitation year is treated by Plan ABC for the 2011 limitation year and later years as if the transferred benefit were provided under a plan that must be aggregated with Plan ABC that terminated immediately prior to the transfer with sufficient assets to pay benefit liabilities under the plan, and had purchased annuities to provide plan benefits. This is because M's transferred benefit is not otherwise required to be taken into account by Plan ABC for the 2011 limitation year and later years pursuant to paragraphs (a)(1) and (b)(2)(i) of this section. While Plan ABC must take into account Participant M's annual benefit under Plan XYZ under paragraph (a)(1) of this section, Participant M's annual benefit for this purpose is limited under paragraph (b)(2)(i) of this section to M's accrued benefit under Plan XYZ immediately prior to the 2010 stock sale, and Participant M's pre-2010 stock sale accrued benefit under Plan XYZ excludes the 2011 transfer.

(iii) *Treatment of plans maintained by LMN Corporation and XYZ Corporation for the 2011 limitation year and later years.* Pursuant to § 1.415(b)-1(b)(3)(i)(C), Participant M's benefit that is transferred to Plan XYZ from Plan ABC must be treated as provided under Plan XYZ for purposes of applying the limitations of section 415 to Plan XYZ with respect to Participant M for the limitation year in which the transfer occurs and later years. In applying the limitations of section 415(b) to Plans LMN and XYZ with respect to Participant M for the 2010 limitation year and later years, the

annual benefit of Participant M under Plans ABC, LMN, and XYZ must be aggregated pursuant to § 1.415(a)-1(f)(1) and paragraph (a)(1) of this section, but for this purpose, Participant M's benefit under Plan ABC is treated as if it were provided under a plan that terminated immediately prior to the cessation of affiliation of ABC Corporation and XYZ Corporation with sufficient assets to pay benefit liabilities under the plan, and had purchased an annuity to provide Participant M's benefits. (See paragraph (b)(2)(i) of this section and *Example 2*.) In applying the limitations of section 415(b) to Plans LMN and XYZ with respect to Participant M for the 2011 limitation year and later years, the annual benefit of Participant M under Plans ABC, LMN, and XYZ still must be aggregated pursuant to § 1.415(a)-1(f)(1) and paragraph (a)(1) of this section. However, beginning with the 2011 limitation year, ABC Corporation is a predecessor employer with respect to LMN Corporation and XYZ Corporation with respect to Participant M on account of the transfer of benefits from Plan ABC to Plan XYZ, pursuant to paragraph (c)(1) of this section. Therefore, Plans LMN and XYZ must take into account benefits that Participant M accrued under Plan ABC after the January 1, 2010, cessation of affiliation of ABC Corporation and XYZ Corporation that were not transferred to Plan XYZ on January 1, 2011, pursuant to paragraphs (c)(1) and (d)(1) of this section. Since all of Participant M's benefit in Plan ABC is transferred to Plan XYZ on January 1, 2011, Participant M's annual benefit from Plan ABC for purposes of aggregating Plan ABC with Plans LMN and XYZ is zero.

*Example 5. (i) Facts.* The facts are the same as in *Example 2*, except that instead of the 2010 stock sale, XYZ Corporation sells some of its operating assets to LMN Corporation (and, under the facts and circumstances, the sale does not result in XYZ Corporation constituting a predecessor employer of LMN Corporation under the rules of paragraph (c)(2) of this section), and in connection with the asset sale, LMN Corporation assumes sponsorship of Plan XYZ in place of XYZ Corporation, effective January 1, 2010.

*(ii) Treatment of plans maintained by ABC Corporation and XYZ Corporation.* Pursuant to paragraph (a)(1) of this section, all defined benefit plans ever maintained by ABC Corporation and XYZ Corporation must be aggregated as a single defined benefit plan for purposes of applying the limitations of section 415(b). However, for purposes of determining the annual benefit under Plan XYZ for the 2010 limitation year and later years, the aggregation of a participant's benefit under Plan XYZ is limited to the participant's annual benefit accrued immediately prior to the January 1, 2010, transfer of sponsorship of Plan XYZ. This is because paragraph (b)(2)(i) of this section provides that a formerly affiliated plan of an employer is treated as if it were a plan that terminated immediately prior to the cessation of affiliation with sufficient assets to pay benefit liabilities under the plan, and had purchased annuities to provide plan benefits. The January 1, 2010, transfer of sponsorship of Plan XYZ is a cessation of affiliation under

paragraph (b)(2)(ii) of this section because this event causes Plan XYZ to no longer actually be maintained by either ABC Corporation or XYZ Corporation. Effective immediately after the January 1, 2010, transfer of sponsorship, Plan XYZ is a formerly affiliated plan with respect to ABC Corporation and XYZ Corporation under paragraph (b)(2)(ii) of this section because immediately prior to the cessation of affiliation, Plan XYZ was actually maintained by XYZ Corporation, and immediately after the cessation of affiliation, Plan XYZ is not actually maintained by either XYZ Corporation or ABC Corporation. Therefore, in applying the limitation of section 415(b) to Participant M for the 2010 limitation year and later limitation years, Plan ABC must take into account the annual benefit provided under Plan ABC to Participant M and the annual benefit provided under Plan XYZ to Participant M as if Plan XYZ had terminated immediately prior to the 2010 stock sale with sufficient assets to pay benefit liabilities under the plan, and had purchased annuities to provide plan benefits. The aggregation of Plan XYZ with Plan ABC is irrelevant for purposes of Participant O because Participant O does not have any accrued benefit under Plan XYZ (as determined prior to the 2010 transfer of sponsorship).

*(iii) Treatment of plans maintained by LMN Corporation.* Under paragraph (a)(1) of this section, all defined benefit plans ever maintained by LMN Corporation or a predecessor employer must be aggregated as a single plan for purposes of applying the limitations of section 415(b). ABC Corporation and XYZ Corporation constitute a predecessor employer pursuant to paragraph (c)(1) of this section with respect to the participants who participate in Plan XYZ on the date of the transfer of sponsorship of Plan XYZ (the transferred participants) from XYZ Corporation to LMN Corporation, such as Participant M. This is because, effective with the January 1, 2010, transfer of sponsorship, LMN Corporation maintains a plan (Plan XYZ) under which the participants accrued a benefit while performing services for XYZ Corporation (which is in turn affiliated with ABC Corporation under § 1.415(a)-1(f)(1)) and such benefits are provided under a plan maintained by LMN Corporation. Therefore, for the 2010 limitation year and later years, the annual benefit under Plan ABC of the transferred participants (such as Participant M) must be aggregated with the annual benefit provided to such participants under Plans XYZ and LMN for purposes of determining whether Plan LMN or Plan XYZ satisfies the limitations of section 415(b). However, the aggregation of the transferred participants' Plan ABC annual benefits is limited to the annual benefit accrued under Plan ABC immediately prior to January 1, 2010, transfer of sponsorship. This is because, pursuant to paragraph (c)(1) of this section, Plan ABC is treated from the perspective of plans maintained by LMN Corporation as if Plan ABC had terminated immediately prior to the transfer of sponsorship of Plan ABC to LMN Corporation with sufficient assets to pay benefit liabilities under the plan, and had

purchased annuities to provide plan benefits. ABC Corporation and XYZ Corporation do not constitute a predecessor employer with respect to Participant O. Thus, if Participant O is a participant in Plan LMN or becomes a participant in Plan XYZ after the 2010 transfer of sponsorship, neither plan aggregates Participant O's Plan ABC benefits for purposes of satisfying section 415(b). In applying paragraph (a)(1) of this section to a participant, plans maintained by LMN Corporation do not double count the participant's annual benefit. See paragraph (d)(1) of this section. Thus, such plans do not aggregate the annual benefit provided under Plan XYZ with the annual benefit from the deemed termination of Plan XYZ that LMN Corporation's predecessor employer (which is ABC and XYZ Corporations) must take into account in applying paragraph (a)(1) of this section, and instead consider the annual benefit actually provided under Plan XYZ.

*Example 6. (i) Facts.* N is employed by a hospital which purchases an annuity contract described in section 403(b) on N's behalf for the current limitation year. N is in control of the hospital within the meaning of section 414(b) or (c), as modified by section 415(h). The hospital also maintains a qualified defined contribution plan during the current limitation year in which N participates.

*(ii) Conclusion.* Under section 415(k)(4), the hospital, as well as N, is considered to maintain the annuity contract. Accordingly, for N the sum of the annual additions under the qualified defined contribution plan and the annuity contract must satisfy the limitations of section 415(c) and § 1.415(c)-1.

*Example 7. (i) Facts.* The facts are the same as in *Example 6*, except that instead of being in control of the hospital, N is the 100 percent owner of a professional corporation P, which maintains a qualified defined contribution plan in which N participates.

*(ii) Conclusion.* Under section 415(k)(4), the professional corporation, as well as N, is considered to maintain the annuity contract. Accordingly, the sum of the annual additions under the qualified defined contribution plan maintained by professional corporation P and the annuity contract must satisfy the limitations of section 415(c) and § 1.415(c)-1. See § 1.415(g)-1(b)(3)(iv)(C)(2) for an example of the treatment of a contribution to a section 403(b) annuity contract that exceeds the limits of section 415(c) by reason of the aggregation required by this section.

*Example 8. (i) Facts.* J is an employee of two corporations, N and M, each of which has employed J for more than 10 years. N and M are not required to be aggregated pursuant to section 415(f) and this section. Each corporation has a qualified defined benefit plan in which J has participated for more than 10 years. Each plan provides a benefit which is equal to 75 percent of a participant's average compensation for the period of the participant's high-3 years of service and is payable in the form of a straight life annuity beginning at age 65. J's average compensation for the period of his high-3 years of service from each corporation is \$160,000. In July 2008, N Corporation becomes a wholly owned subsidiary of M Corporation.

(ii) *Plan aggregation analysis.* As a result of the acquisition of N Corporation by M Corporation, J is treated as being employed by a single employer under section 414(b). Therefore, because section 415(f)(1)(A) requires that all defined benefit plans of an employer be treated as one defined benefit plan, the two plans must be aggregated for purposes of applying the limitations of section 415. However, under paragraph (e)(3)(i) of this section, since the plans were not aggregated as of the first day of the 2008 limitation year (January 1, 2008), they will not be considered aggregated until the limitation year beginning January 1, 2009, provided that no plan amendment increasing benefits with respect to participant J is made after the acquisition of N by M.

(iii) *Application to Participant J.* J has a total benefit under the two plans of \$240,000, which, as a result of the plan aggregation, is in excess of the section 415(b) limit. However, under paragraph (e)(3)(ii) of this section, the limitations of section 415(b) and § 1.415(b)-1 applicable to J may be exceeded in this situation without plan disqualification so long as J's accrued benefit derived from employer contributions is not increased (that is, J's accrued benefit does not increase on account of increased compensation, service, participation, or other accruals) during the period within which the limitations are being exceeded.

*Example 9.* (i) *Facts.* A, age 30, owns all of the stock of X Corporation and also owns 10 percent of the stock of Z Corporation. F, A's father, directly owns 75 percent of the stock of Z Corporation. Both corporations have qualified defined contribution plans in which A participates. A's compensation (within the meaning of § 1.415(c)-2) for 2008 is \$20,000 from Z Corporation and \$150,000 from X Corporation. During the period January 1, 2008 through June 30, 2008, annual additions of \$20,000 are credited to A's account under the plan of Z Corporation, while annual additions of \$40,000 are credited to A's account under the plan of X Corporation. In both instances, the amount of annual additions represent the maximum allowable under section 415(c) and § 1.415(c)-1. On July 15, 2008, F dies, and A inherits all of F's stock in Z in 2008.

(ii) *Conclusion.* As of July 15, 2008, A is considered to be in control of X and Z Corporations, and the two plans must be aggregated for purposes of applying the limitations of section 415. However, even though A's total annual additions for 2008 are \$60,000, the limitations of section 415(c) and § 1.415(c)-1 are not violated for 2008, provided no annual additions are credited to A's accounts after July 15, 2008 (the date that A is first in control of Z) for the remainder of the 2008 limitation year.

*Example 10.* (i) *Facts.* P is a key employee of employer XYZ who participates in a qualified defined contribution plan (Plan X). P is also provided post-retirement medical benefits, and XYZ has taken into account a reserve for those benefits under section 419A(c)(2). In the 2008 limitation year, P's compensation is \$30,000 and P's annual additions under Plan X are \$5,000. Pursuant to section 419A(d), a separate account is maintained for P, and that account is credited

with an allocation of \$32,000 for the 2008 limitation year. It is assumed that the section 415(c)(1)(A) dollar limit for 2008 is \$46,000.

(ii) *Separate testing analysis.* Under paragraph (h)(1) of this section, Plan X and the individual medical account must separately satisfy the requirements of section 415(c), taking into account any special limit applicable to that arrangement. In this case, the contributions to Plan X separately satisfy the limitations of section 415(c). While the individual medical account is treated as a defined contribution plan subject to the rules of section 415(c), it is not subject to the 100 percent of compensation limit of section 415(c)(1)(B), so the contributions to that account satisfy the limitations of section 415(c).

(iii) *Aggregation analysis.* The sum of the annual additions under Plan X and the amounts contributed to the separate account on P's behalf must satisfy the requirements of section 415(c). Under paragraph (h)(2) of this section, the limit applicable to the aggregated plan is equal to the greater of the limits applicable to the separate plans. In this case, the limit applicable to the medical account is \$46,000 (which is greater than the limit of \$30,000 applicable to the qualified plan), so the limit that applies to the aggregated plan is \$46,000, and the aggregated plan satisfies the requirements of section 415.

■ **Par. 15.** Section 1.415(g)-1 is added to read as follows:

**§ 1.415(g)-1 Disqualification of plans and trusts.**

(a) *Disqualification of plans—(1) In general.* Under section 415(g) and this section, with respect to a particular limitation year, a plan (and the trust forming part of the plan) is disqualified in accordance with the rules provided in paragraph (b) of this section, if the conditions described in paragraph (a)(2) or (a)(3) of this section apply. For purposes of this paragraph (a), the determination of whether a plan or a group of aggregated plans exceeds the limitations imposed by section 415 for a particular limitation year is, except as otherwise provided, made by taking into account the aggregation of plan rules provided in section 415(f) and § 1.414(f)-1.

(2) *Defined contribution plans.* A plan is disqualified in accordance with the rules provided in paragraph (b) of this section if annual additions (as defined in § 1.415(c)-1(b)) with respect to the account of any participant in a defined contribution plan maintained by the employer exceed the limitations of section 415(c) and § 1.415(c)-1.

(3) *Defined benefit plans.* A plan is disqualified in accordance with the rules provided in paragraph (b) of this section if the annual benefit (as defined in § 1.415(b)-1(b)(1)) of a participant in a defined benefit plan maintained by the

employer exceeds the limitations of section 415(b) and § 1.415(b)-1.

(b) *Rules for disqualification of plans and trusts—(1) In general.* If any plan (including a trust which forms part of such plan) is disqualified for a particular limitation year under the rules set forth in this paragraph (b), then the disqualification is effective as of the first day of the first plan year containing any portion of the particular limitation year.

(2) *Single plan.* In the case of a single qualified defined benefit plan (determined without regard to section 415(f) and § 1.415(f)-1) maintained by the employer that provides an annual benefit (as defined in § 1.415(b)-1(b)(1)) in excess of the limitations of section 415(b) and § 1.415(b)-1 for any particular limitation year, such plan is disqualified in that limitation year. Similarly, if the employer only maintains a single defined contribution plan (determined without regard to section 415(f) and § 1.415(f)-1) under which annual additions (as defined in § 1.415(c)-1(b)) allocated to the account of any participant exceed the limitations of section 415(c) and § 1.415(c)-1 for any particular limitation year, such plan is also disqualified in that limitation year.

(3) *Multiple plans—(i) In general.* If the limitations of section 415(b) and § 1.415(b)-1, or section 415(c) and § 1.415(c)-1, are exceeded for a particular limitation year with respect to any participant solely because of the application of the aggregation rules of section 415(f)(1) and § 1.415(f)-1 (taking into account the rules of § 1.415(a)-1(f)), then one or more of the plans is disqualified in accordance with the ordering rules set forth in paragraph (b)(3)(ii) of this section, applied in accordance with the rules of application set forth in paragraph (b)(3)(iii) of this section, subject to the special rules set forth in paragraph (b)(3)(iv) of this section, until, without regard to annual benefits or annual additions under the disqualified plan or plans, the remaining plans satisfy the applicable limitations of section 415.

(ii) *Ordering rules—(A) Disqualification of ongoing plans other than multiemployer plans.* If there are two or more plans that have not been terminated at any time including the last day of the particular limitation year, and if one or more of those plans is a multiemployer plan described in section 414(f), then one or more of the plans (as needed to satisfy the limitations of section 415) that has not been terminated and is not a multiemployer plan is disqualified in that limitation year. For purposes of the preceding

sentence, the determination of whether a plan is a multiemployer plan described in section 414(f) is made as of the last day of the particular limitation year.

(B) *Disqualification of ongoing multiemployer plans.* If, after the application of paragraph (b)(3)(ii)(A) of this section, there are two or more plans and one or more of the plans has been terminated at any time including the last day of the particular limitation year, then one or more of the plans (as needed to satisfy the applicable limitations of section 415) that has not been so terminated (regardless of whether the plan is a multiemployer plan described in section 414(f)) is disqualified in that limitation year.

(iii) *Rules of application—(A) Employer elects which plan is disqualified.* If there are two or more plans of an employer within a group of plans one or more of which is to be disqualified pursuant to paragraph (b)(3)(ii)(A) or (B) of this section, then the employer may elect, in a manner determined by the Commissioner, which plan or plans are disqualified. If those two or more plans are involved because of the application of § 1.415(a)–1(f), the employers involved may elect, in a manner determined by the Commissioner, which plan or plans are disqualified. However, the election described in the preceding sentence is not effective unless made by all of those employers.

(B) *Commissioner determines which plan is disqualified.* If the election described in paragraph (b)(3)(iii)(A) of this section is not made with respect to the two plans described in paragraph (b)(3)(iii)(A) of this section, then the Commissioner, taking into account all of the facts and circumstances, has the discretion to determine the plan that is disqualified in the particular limitation year. In making this determination, some of the factors that will be taken into account include, but are not limited to, the number of participants in each plan, the amount of benefits provided on an overall basis by each plan, and the extent to which benefits are distributed or retained in each plan.

(iv) *Special rules—(A) Simplified employee pensions.* If there are two or more plans one or more of which is to be disqualified pursuant to paragraph (b)(3)(ii)(A) or (B) of this section, and if one of the plans is a simplified employee pension (as defined in section 408(k)), then the simplified employee pension is not disqualified until all of the other plans have been disqualified. However, if one of the plans has been terminated, then the simplified employee pension is disqualified before

the terminated plan. For purposes of this paragraph (b)(3)(iv)(A), the disqualification of a simplified employee pension means that the simplified employee pension is no longer described under section 408(k).

(B) *Aggregating medical accounts with defined contribution plans.* In the event that aggregating a medical account described in § 1.415(c)–1(a)(2)(ii)(C) or (D) and a defined contribution plan other than such a medical account causes the limitations of section 415(c) and § 1.415(c)–1 applicable to a participant to be exceeded for a particular limitation year, the defined contribution plan other than the medical account is disqualified for the limitation year.

(C) *Aggregating section 403(b) annuity contract and qualified defined contribution plan—(1) In general.* In the event that aggregating a section 403(b) annuity contract and a qualified defined contribution plan under the provisions of section 415(f)(1)(B) causes the limitations of section 415(c) and § 1.415(c)–1 applicable to a participant under the aggregated defined contribution plans to be exceeded for a particular limitation year, the excess of the contributions to the annuity contract plus the annual additions to the qualified plan over such limitations is attributed to the annuity contract and therefore includable in the gross income of the participant for the taxable year with or within which that limitation year ends. See § 1.415(a)–1(b)(2) for rules regarding the treatment of a contribution to a section 403(b) annuity contract that exceeds the limitations of section 415.

(2) *Example.* The following example illustrates the application of this paragraph (b)(3)(iv)(C). It is assumed for purposes of this example that the dollar limitation under section 415(c)(1)(A) that applies for all relevant limitation years is \$45,000. The example is as follows:

*Example.* (i) N is employed by a hospital which purchases an annuity contract described in section 403(b) on N's behalf for the current limitation year. N is also the 100 percent owner of a professional corporation P that maintains a qualified defined contribution plan during the current limitation year in which N participates. (The facts of this example are the same as in § 1.415(f)–1(j) *Example 7.*) N's compensation (within the meaning of § 1.415(c)–2) from the hospital for the current limitation year is \$150,000. For the current limitation year, the hospital contributes \$30,000 for the section 403(b) annuity contract on N's behalf, which is within the limitations applicable to N under the annuity contract (specifically, the limit under the annuity contract is \$45,000). Professional corporation P also contributes

\$20,000 to the qualified defined contribution plan on N's behalf for the current limitation year (which represents the only annual additions allocated to N's account under the plan for such year), which is within the \$45,000 limitation of section 415(c)(1) applicable to N under the plan.

(ii) Under section 415(k)(4), the professional corporation, as well as N, is considered to maintain the annuity contract. Accordingly, the sum of the annual additions under the qualified defined contribution plan maintained by professional corporation P and the annuity contract must satisfy the limitations of section 415(c) and § 1.415(c)–1.

(iii) Because the total aggregate contributions (\$50,000) exceed the section 415(c) limitation applicable to N (\$45,000), \$5,000 of the \$30,000 contributed to the section 403(b) annuity contract is considered an excess contribution and therefore currently includable in N's gross income. The contract continues to be a section 403(b) annuity contract only if, for the current limitation year and all years thereafter, the issuer of the contract maintains separate accounts for each portion attributable to such excess contributions. See §§ 1.415(a)–1(b)(2).

(c) *Plan year for certain annuity contracts and individual retirement plans.* For purposes of this section, unless the plan under which the annuity contract or individual retirement plan is provided specifies that a different twelve-month period is considered to be the plan year—

(1) An annuity contract described in section 403(b) is considered to have a plan year coinciding with the taxable year of the individual on whose behalf the contract has been purchased; and

(2) A simplified employee pension described in section 408(k) is considered to have a plan year coinciding with the year under the plan that is used pursuant to section 408(k)(7)(C).

■ **Par. 16.** Section 1.415(j)–1 is added to read as follows:

**§ 1.415(j)–1 Limitation year.**

(a) *In general.* Unless the terms of a plan provide otherwise, the limitation year, with respect to any qualified plan maintained by the employer, is the calendar year.

(b) *Alternative limitation year election.* The terms of a plan may provide for the use of any other consecutive twelve month period as the limitation year. This includes a fiscal year with an annual period varying from 52 to 53 weeks, so long as the fiscal year satisfies the requirements of section 441(f). A plan may only provide for one limitation year regardless of the number or identity of the employers maintaining the plan.

(c) *Multiple limitation years—(1) In general.* Where an employer maintains

more than one qualified plan, those plans may provide for different limitation years. The rule described in this paragraph (c) also applies to a controlled group of employers (within the meaning of section 414(b) or (c), as modified by section 415(h)). If the plans of an employer (or a controlled group of employers whose plans are aggregated) have different limitation years, section 415 is applied in accordance with the rule of paragraphs (c)(2) and (3) of this section.

(2) *Testing rule for defined contribution plans.* If a participant is credited with annual additions in only one defined contribution plan, in determining whether the requirements of section 415(c) are satisfied, only the limitation year applicable to that plan is considered. However, if a participant is credited with annual additions in more than one defined contribution plan, each such plan satisfies the requirements of section 415(c) only if the limitations of section 415(c) are satisfied with respect to amounts that are annual additions for the limitation year with respect to the participant under the plan, plus amounts credited to the participant's account under all other plans required to be aggregated with the plan pursuant to section 415(f) and § 1.415(f)-1 that would have been considered annual additions for the limitation year under the plan if they had been credited under the plan rather than an aggregated plan.

(3) *Testing rule for defined benefit plans.* If a participant has participated in only one defined benefit plan, in determining whether the requirements of section 415(b) are satisfied, only the limitation year applicable to that plan is considered. However, if a participant has participated in more than one defined benefit plan, a plan satisfies the requirements of section 415(b) only if the annual benefit under all plans required to be aggregated pursuant to section 415(f) and § 1.415(f)-1 for the limitation year of that plan with respect to the participant satisfy the applicable limitations of section 415(b). Thus, for example, the dollar limitation of section 415(b)(1)(A) applicable to the limitation year for each plan must be applied to annual benefits under all aggregated plans to determine whether the plan satisfies the requirements of section 415(b).

(d) *Change of limitation year—(1) In general.* Once established, the limitation year may be changed only by amending the plan. Any change in the limitation year must be a change to a 12-month period commencing with any day within the current limitation year. For purposes of this section, the limitations

of section 415 are to be applied in the normal manner to the new limitation year.

(2) *Application to short limitation period.* Where there is a change of limitation year, the limitations of section 415 are to be separately applied to a limitation period which begins with the first day of the current limitation year and which ends on the day before the first day of the first limitation year for which the change is effective. In the case of a defined contribution plan, the dollar limitation with respect to this limitation period is determined by multiplying the applicable dollar limitation for the calendar year in which the limitation period ends by a fraction, the numerator of which is the number of months (including any fractional parts of a month) in the limitation period, and the denominator of which is 12. In the case of a defined benefit plan, no adjustment is made to the section 415(b) limitations to reflect a short limitation period.

(3) *Deemed change of limitation year.* If a defined contribution plan is terminated effective as of a date other than the last day of the plan's limitation year, the plan is treated for purposes of this section as if the plan was amended to change its limitation year. Thus, the rules of this paragraph (d) apply to the terminating plan's final limitation year.

(e) *Limitation year for individuals on whose behalf section 403(b) annuity contracts have been purchased.* The limitation year of an individual on whose behalf a section 403(b) annuity contract has been purchased by an employer is determined in the following manner.

(1) If the individual is not in control of any employer (within the meaning of § 1.415(f)-1(f)(2)(ii)), the limitation year is the calendar year. However, the individual may elect to change the limitation year to another twelve-month period. To do this, the individual must attach a statement to his or her income tax return filed for the taxable year in which the change is made. Any change in the limitation year must comply with the rules set forth in paragraph (d) of this section.

(2) If the individual is in control of an employer (within the meaning of § 1.415(f)-1(f)(2)(ii)), the limitation year is the limitation year of that employer.

(f) *Limitation year for individuals on whose behalf individual retirement plans are maintained.* The limitation year of an individual on whose behalf an individual retirement plan (within the meaning of section 7701(a)(37)) is maintained is determined in the manner described in paragraph (e) of this section.

(g) *Examples.* The following examples illustrate the application of this section:

*Example 1.* (i) Participant M is employed by both Employer A and Employer B, each of which maintains a qualified defined contribution plan. M participates in both of these plans. The limitation year for Employer A's plan is January 1 through December 31, and the limitation year for Employer B's plan is April 1 through March 31. Employer A and Employer B are both corporations, and Corporation X owns 100 percent of the stock of Employer A and Employer B.

(ii) The two plans in which M participates are required under section 415(f) to be aggregated for purposes of applying the limitations of section 415(c) to annual additions made with respect to M. Thus, for example, for the limitation year of Employer A's plan that begins January 1, 2008, annual additions with respect to M that are subject to the limitations of section 415(c) include both amounts that are annual additions with respect to M under Employer A's plan for the period beginning January 1, 2008, and ending December 31, 2008, and amounts contributed to Employer B's plan with respect to M that would have been considered annual additions for the period beginning January 1, 2008, and ending December 31, 2008, under Employer A's plan if those amounts had instead been contributed to Employer A's plan.

*Example 2.* In 2008, an employer with a qualified defined contribution plan using the calendar year as the limitation year elects to change the limitation year to a period beginning July 1 and ending June 30. Because of this change, the plan must satisfy the limitations of section 415(c) for the limitation period beginning January 1, 2008, and ending June 30, 2008. In applying the limitations of section 415(c) to this limitation period, the amount of compensation taken into account may only include compensation for this period. Furthermore, the dollar limitation for this period is the otherwise applicable dollar limitation for calendar year 2008, multiplied by 6/12.

■ **Par. 17.** Section 1.416-1 is amended by revising Q&A T-21 to read as follows: *§ 1.416-1 Questions and answers on top heavy plans.*

\* \* \* \* \*

T-21. Q. For purposes of testing whether an individual has compensation of more than \$150,000, what definition of compensation must be used?

A. The definition of compensation to be used is the definition in § 1.415(c)-2, however, compensation must be determined for a plan year, not a limitation year. Alternatively, compensation that would be stated on an employee's Form W-2, "Wage and Tax Statement," for the calendar year that ends with or within the plan year may be used, although amounts that would have been stated on the employee's Form W-2 but for an election under section 125, 132(f)(4),

401(k), 403(b), 408(k), 408(p)(2)(A)(i), or 457(b) must be included. A plan must use the same definition of compensation for all top-heavy plan purposes for which the definition in this Q and A must be used.

\* \* \* \* \*

■ **Par. 18.** Section 1.457-4 is amended by revising paragraph (d) to read as follows:

**§ 1.457-4 Annual deferrals, deferral limitations, and deferral agreements under eligible plans.**

\* \* \* \* \*

(d) *Deferrals after severance from employment, including sick, vacation, and back pay under an eligible plan—*  
 (1) *In general.* An eligible plan may provide that a participant who has not had a severance from employment may elect to defer accumulated sick pay, accumulated vacation pay, and back pay under an eligible plan if the requirements of section 457(b) are satisfied. For example, the plan must provide, in accordance with paragraph (b) of this section, that these amounts may be deferred for any calendar month only if an agreement providing for the deferral is entered into before the beginning of the month in which the amounts would otherwise be paid or made available and the participant is an employee on the date the amounts would otherwise be paid or made available. For purposes of section 457, compensation that would otherwise be paid for a payroll period that begins before severance from employment is treated as an amount that would otherwise be paid or made available before an employee has a severance from employment. In addition, deferrals may be made for former employees with respect to compensation described in § 1.415(c)-2(e)(3)(i) (relating to certain compensation paid by the later of 2½ months after severance from employment or the end of the limitation year that includes the date of severance from employment). For this purpose, the calendar year is substituted for the limitation year. In addition, compensation described in § 1.415(c)-2(e)(4), (g)(4), or (g)(7) (relating to compensation paid to participants who are permanently and totally disabled or compensation relating to qualified military service under section 414(u)), provided those amounts represent compensation described in § 1.415(c)-2(e)(3)(i).

(2) *Examples.* The provisions of this paragraph (d) are illustrated by the following examples:

*Example 1.* (i) *Facts.* Participant G, who is age 62 in year 2007, is an employee who

participates in an eligible plan providing a normal retirement age of 65 and a bona fide sick leave and vacation pay program of the eligible employer. Under the terms of G's employer's eligible plan and the sick leave and vacation pay program, G is permitted to make a one-time election to contribute amounts representing accumulated sick pay to the eligible plan. G has a severance from employment on January 12, 2008, at which time G's accumulated sick and vacation pay that is payable on March 15, 2008, totals \$12,000. G elects, on February 4, 2008, to have the \$12,000 of accumulated sick and vacation pay contributed to the eligible plan.

(ii) *Conclusion.* Under the terms of the eligible plan and the sick and vacation pay program, G may elect before March 1, 2008, to defer the accumulated sick and vacation pay because the agreement providing for the deferral is entered into before the beginning of the month in which the amount is currently available and the amount is bona fide accumulated sick and vacation pay, as described in § 1.415(c)-2(e)(3)(ii), and that is payable by the later of 2½ months after severance from employment or the end of the calendar year that includes the date of severance from employment by G. Thus, under this section and § 1.415(c)-2(e)(3)(ii), the \$12,000 is included in G's includible compensation for purposes of determining G's includible compensation in year 2008.

*Example 2.* (i) *Facts.* Same facts as in *Example 1*, except that G's severance from employment is on May 31, 2008, G's \$12,000 of accumulated sick and vacation pay is payable on September 15, 2008 (which is by the later of 2½ months after severance from employment or the end of the calendar year that includes the date of severance from employment by G), and G's election to defer the accumulated sick and vacation pay is made before May 1, 2008.

(ii) *Conclusion.* Under this section and § 1.415(c)-2(e)(3)(ii), the \$12,000 is included in G's includible compensation for purposes of determining G's includible compensation in year 2008.

*Example 3.* (i) *Facts.* Employer X maintains an eligible plan and a vacation leave plan. Under the terms of the vacation leave plan, employees generally accrue three weeks of vacation per year. Up to one week's unused vacation may be carried over from one year to the next, so that in any single year an employee may have a maximum of four weeks' vacation time. At the beginning of each calendar year, under the terms of the eligible plan (which constitutes an agreement providing for the deferral), the value of any unused vacation time from the prior year in excess of one week is automatically contributed to the eligible plan, to the extent of the employee's maximum deferral limitations. Amounts in excess of the maximum deferral limitations are forfeited.

(ii) *Conclusion.* The value of the unused vacation pay contributed to X's eligible plan pursuant to the terms of the plan and the terms of the vacation leave plan is treated as an annual deferral to the eligible plan for January of the calendar year. No amounts contributed to the eligible plan will be considered made available to a participant in X's eligible plan.

\* \* \* \* \*

■ **Par. 19.** Section 1.457-5 is amended by revising paragraph (d) *Example 2* to read as follows:

**§ 1.457-5 Individual limitation for combined annual deferrals under multiple eligible plans.**

\* \* \* \* \*

(d) \* \* \*

*Example 2.* (i) *Facts.* Participant E, who will turn 63 on April 1, 2006, participates in four eligible plans during year 2006: Plan W which is an eligible governmental plan; and Plans X, Y, and Z which are each eligible plans of three different tax-exempt entities. For year 2006, the limitation that applies to Participant E under all four plans under § 1.457-4(c)(1)(i)(A) is \$15,000. For year 2006, the additional age 50 catch-up limitation that applies to Participant E under all four plans under § 1.457-4(c)(2) is \$5,000. Further, for year 2006, different limitations under § 1.457-4(c)(3) and (c)(3)(ii)(B) apply to Participant E under each of these plans, as follows: under Plan W, the underutilized limitation under § 1.457-4(c)(3)(ii)(B) is \$7,000; under Plan X, the underutilized limitation under § 1.457-4(c)(3)(ii)(B) is \$2,000; under Plan Y, the underutilized limitation under § 1.457-4(c)(3)(ii)(B) is \$8,000; and under Plan Z, § 1.457-4(c)(3) is not applicable since normal retirement age is 62 under Plan Z. Participant E's includible compensation is in each case in excess of any applicable deferral.

(ii) *Conclusion.* For purposes of applying this section to Participant E for year 2006, Participant E could elect to defer \$23,000 under Plan Y, which is the maximum deferral limitation under § 1.457-4(c)(1) through (3), and to defer no amount under Plans W, X, and Z. The \$23,000 maximum amount is equal to the sum of \$15,000 plus \$8,000, which is the catch-up amount applicable to Participant E under Plan Y and which is the largest catch-up amount applicable to Participant E under any of the four plans for year 2006. Alternatively, Participant E could instead elect to defer the following combination of amounts: an aggregate total of \$15,000 to Plans X, Y, and Z, if no contribution is made to Plan W; an aggregate total of \$20,000 to any of the four plans; or \$22,000 to Plan W and none to any of the other three plans.

(iii) If the underutilized amount under Plans W, X, and Y for year 2006 were in each case zero (because E had always contributed the maximum amount or E was a new participant) or an amount not in excess of \$5,000, the maximum exclusion under this section would be \$20,000 for Participant E for year 2006 (\$15,000 plus the \$5,000 age 50 catch-up amount), which Participant E could contribute to any of the plans.

■ **Par. 20.** Section 1.457-6 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 1.457-6 Timing of distributions under eligible plans.**

(a) *In general.* Except as provided in paragraph (c) of this section (relating to distributions on account of an

unforeseeable emergency), paragraph (e) of this section (relating to distributions of small accounts), § 1.457–10(a) (relating to plan terminations), or § 1.457–10(c) (relating to domestic relations orders), amounts deferred under an eligible plan may not be paid to a participant or beneficiary before the participant has a severance from employment with the eligible employer or when the participant attains age 70½, if earlier. For rules relating to loans, see paragraph (f) of this section. This section does not apply to distributions of excess amounts under § 1.457–4(e). However, except to the extent set forth by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin (see § 601.601(d) of this chapter), this section applies to amounts held in a separate account for eligible rollover distributions maintained by an eligible governmental plan as described in § 1.457–10(e)(2).

\* \* \* \* \*

(c) *Rules applicable to distributions for unforeseeable emergencies*—(1) *In general.* An eligible plan may permit a distribution to a participant or beneficiary for an unforeseeable emergency. The distribution must satisfy the requirements of paragraph (c)(2) of this section.

(2) *Requirements*—(i) *Unforeseeable emergency defined.* An unforeseeable emergency must be defined in the plan as a severe financial hardship of the participant or beneficiary resulting from an illness or accident of the participant or beneficiary, the participant's or beneficiary's spouse, or the participant's or beneficiary's dependent (as defined in section 152, and, for taxable years beginning on or after January 1, 2005, without regard to section 152(b)(1), (b)(2), and (d)(1)(B)); loss of the participant's or beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, such as damage that is the result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or the beneficiary. For example, the imminent foreclosure of or eviction from the participant's or beneficiary's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may

constitute an unforeseeable emergency. Finally, the need to pay for the funeral expenses of a spouse or a dependent (as defined in section 152, and, for taxable years beginning on or after January 1, 2005, without regard to section 152(b)(1), (b)(2), and (d)(1)(B)) of a participant or beneficiary may also constitute an unforeseeable emergency. Except as otherwise specifically provided in this paragraph (c)(2)(i), the purchase of a home and the payment of college tuition are not unforeseeable emergencies under this paragraph (c)(2)(i).

(ii) *Unforeseeable emergency distribution standard.* Whether a participant or beneficiary is faced with an unforeseeable emergency permitting a distribution under this paragraph (c) is to be determined based on the relevant facts and circumstances of each case, but, in any case, a distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the plan.

(iii) *Distribution necessary to satisfy emergency need.* Distributions because of an unforeseeable emergency must be limited to the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay for any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

\* \* \* \* \*

■ **Par. 21.** Section 1.457–10 is amended by revising paragraph (b)(8) to read as follows:

**§ 1.457–10 Miscellaneous provisions.**

\* \* \* \* \*

(b) \* \* \*

(8) *Purchase of permissive service credit by plan-to-plan transfers from an eligible governmental plan to a qualified plan*—(i) *General rule.* An eligible governmental plan of a State may provide for the transfer of amounts deferred by a participant or beneficiary to a defined benefit governmental plan (as defined in section 414(d)), and no amount shall be includible in gross income by reason of the transfer, if the conditions in paragraph (b)(8)(ii) of this section are met. A transfer under this paragraph (b)(8) is not treated as a distribution for purposes of § 1.457–6.

Therefore, such a transfer may be made before severance from employment.

(ii) *Conditions for plan-to-plan transfers from an eligible governmental plan to a qualified plan.* A transfer may be made under this paragraph (b)(8) only if the transfer is either—

(A) For the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under the receiving defined benefit governmental plan; or

(B) A repayment to which section 415 does not apply by reason of section 415(k)(3).

(iii) *Example.* The provisions of this paragraph (b)(8) are illustrated by the following example:

*Example.* (i) *Facts.* Plan X is an eligible governmental plan maintained by County Y for its employees. Plan X provides for distributions only in the event of death, an unforeseeable emergency, or severance from employment with County Y (including retirement from County Y). Plan S is a qualified defined benefit plan maintained by State T for its employees. County Y is within State T. Employee A is an employee of County Y and is a participant in Plan X. Employee A previously was an employee of State T and is still entitled to benefits under Plan S. Plan S includes provisions allowing participants in certain plans, including Plan X, to transfer assets to Plan S for the purchase of service credit under Plan S and does not permit the amount transferred to exceed the amount necessary to fund the benefit resulting from the service credit. Although not required to do so, Plan X allows Employee A to transfer assets to Plan S to provide a service benefit under Plan S.

(ii) *Conclusion.* The transfer is permitted under this paragraph (b)(8).

\* \* \* \* \*

**PART 11—TEMPORARY INCOME TAX REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974**

■ **Par. 22.** The authority citation for part 11 continues to read in part as follows:

*Authority:* 26 U.S.C. 7805. \* \* \*

**§ 11.415(c)(4)–1 [Removed]**

■ **Par. 23.** Section 11.415(c)(4)–1 is removed.

**Kevin M. Brown,**

*Deputy Commissioner for Services and Enforcement.*

Approved: March 20, 2007.

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. E7–5750 Filed 4–4–07; 8:45 am]

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# Federal Register

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Thursday,  
April 5, 2007

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## Part III

# Securities and Exchange Commission

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**17 CFR Parts 200, 232, 240 and 249  
Termination of a Foreign Private Issuer's  
Registration of a Class of Securities  
Under Section 12(g) and Duty To File  
Reports Under Section 13(a) or 15(d) of  
the Securities Exchange Act of 1934;  
Final Rule**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 200, 232, 240 and 249

[Release No. 34-55540; International Series Release No. 1301; File No. S7-12-05]

RIN 3235-AJ38

### Termination of a Foreign Private Issuer's Registration of a Class of Securities Under Section 12(g) and Duty To File Reports Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** We are adopting amendments to the rules that govern when a foreign private issuer may terminate the registration of a class of equity securities under section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act") and the corresponding duty to file reports required under section 13(a) of the Exchange Act, and when it may cease its reporting obligations regarding a class of equity or debt securities under section 15(d) of the Exchange Act. Under the current rules, a foreign private issuer may find it difficult to terminate its Exchange Act registration and reporting obligations despite the fact that there is relatively little interest in the issuer's U.S.-registered securities among United States investors. Moreover, currently a foreign private issuer can only suspend, and cannot terminate, a duty to report arising under section 15(d) of the Exchange Act. New Exchange Act Rule 12h-6 will permit a foreign private issuer of equity securities to terminate its reporting obligations under either section 13(a) or section 15(d) of the Exchange Act by meeting a quantitative benchmark designed to measure relative U.S. market interest for its equity securities that does not depend on a head count of the issuer's U.S. security holders. The new rule will permit a foreign private issuer to compare the average daily trading volume of its securities in the United States with its worldwide average daily trading volume, using a 5 percent benchmark. The accompanying rule amendments will also help provide U.S. investors with ready access through the Internet on an ongoing basis to material information about a foreign private issuer of equity securities that is required by its home country after it has exited the Exchange Act reporting system. The new rule will also permit a foreign private issuer of debt securities to terminate, rather than merely

suspend, its section 15(d) reporting obligations.

**DATES:** *Effective Date:* June 4, 2007.

**FOR FURTHER INFORMATION CONTACT:** Elliot Staffin, Special Counsel, at (202) 551-3450, in the Office of International Corporate Finance, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-3628.

**SUPPLEMENTARY INFORMATION:** We are adopting amendments to Commission Rule 30-1,<sup>1</sup> Rule 101<sup>2</sup> of Regulation S-T,<sup>3</sup> and Rules 12g3-2, 12g-4 and 12h-3<sup>4</sup> under the Exchange Act,<sup>5</sup> and adding new Rule 12h-6<sup>6</sup> and Form 15F<sup>7</sup> under the Exchange Act.

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<sup>1</sup> 17 CFR 200.30-1.

<sup>2</sup> 17 CFR 232.101.

<sup>3</sup> 17 CFR 232.10 *et seq.*

<sup>4</sup> 17 CFR 240.12g3-2, 240.12g-4 and 240.12h-3.

<sup>5</sup> 15 U.S.C. 78a *et seq.*

<sup>6</sup> 17 CFR 240.12h-6.

<sup>7</sup> 17 CFR 249.324.

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## I. Executive Summary and Background

### A. Introduction

In December 2005, the Commission issued proposed amendments to its current rules governing when a foreign private issuer<sup>8</sup> may exit the Exchange Act reporting regime.<sup>9</sup> Under the current rules, the primary determinant regarding whether a foreign private issuer may terminate its registration of a class of securities under section 12(g)<sup>10</sup> or suspend its reporting obligations under section 15(d)<sup>11</sup> is if its subject securities are held of record by less than 300 residents in the United States.<sup>12</sup> The Commission proposed to amend these rules out of concern that, due to the increased globalization of securities markets in recent decades as well as other trends, it has become difficult for a foreign private issuer to exit the Exchange Act reporting system even when there is relatively little U.S. investor interest in its U.S.-registered securities.<sup>13</sup>

We recognize that U.S. investors benefit from the investment opportunities provided by foreign private issuers registering their securities with the Commission and listing and publicly offering those securities in the United States. However, because of the burdens and uncertainties associated with terminating registration and reporting under the Exchange Act, the current exit process may serve as a disincentive to foreign private issuers accessing the

<sup>8</sup> See the definition of foreign private issuer at Exchange Act Rule 3b-4(c) (17 CFR 240.3b-4(c)).

<sup>9</sup> Release No. 34-53020 (December 23, 2005), 70 FR 77688 (December 30, 2005) (Original Proposing Release).

<sup>10</sup> This statutory section applies to equity securities only. See Exchange Act Section 12(g)(1) [15 U.S.C. 78f(g)(1)].

<sup>11</sup> 15 U.S.C. 78o(d). The effectiveness of a registration statement under the Securities Act of 1933 ("Securities Act") triggers Section 15(d) reporting obligations. That section provides that an issuer cannot suspend its reporting obligations unless the subject class of securities is held of record by less than 300 persons at the beginning of a fiscal year other than the year in which the Securities Act registration statement became effective. Section 15(d) does not permit an issuer to terminate, but only to suspend, its reporting obligations under that section.

<sup>12</sup> Exchange Act Rules 12g-4(a)(2)(i) (17 CFR 240.12g-4(a)(2)(i)) and 12h-3(b)(2)(i) (17 CFR 240.12h-3(b)(2)(i)).

<sup>13</sup> See Original Proposing Release, 70 FR at 77689-77690.

U.S. public capital markets.<sup>14</sup> In order to remove this disincentive, we proposed to amend the current Exchange Act exit rules for foreign private issuers.

As originally proposed, new Exchange Act Rule 12h-6 would have permitted a foreign private issuer of equity securities to terminate its Exchange Act registration and reporting obligations if, among other conditions, it met one of a set of alternative quantitative benchmarks that, depending on whether the issuer was a well-known seasoned issuer ("WKSI"),<sup>15</sup> was based either on a combination of U.S. trading volume and U.S. public float criteria or just U.S. public float data.<sup>16</sup> However, numerous commenters stated that the originally proposed rules would still unduly restrict a significant portion of U.S.-registered foreign private issuers from exiting the Exchange Act reporting regime, thus making it unlikely that the proposed rules would achieve their purpose of attracting more foreign companies to U.S. public capital markets.

In light of these criticisms, we reconsidered our approach and, in December 2006, we repropoed the amendments to the Exchange Act exit rules for foreign private issuers.<sup>17</sup> As an alternative to the record holder standard for equity securities issuers, we proposed a quantitative benchmark based solely on a comparison of the average daily trading volume of a foreign private issuer's equity securities in the United States with that in its primary trading market. We reasoned that a standard based on trading volume may in fact be superior to the originally proposed standard, which was based

primarily on a comparison of an issuer's U.S. public float with its worldwide public float, because it is a more direct measure of the issuer's nexus with the U.S. market and because trading volume data is easier to obtain than public float or record holder data.<sup>18</sup> We concluded that, in applying an exit standard based on trading volume data for the U.S. and an issuer's primary trading market, issuers would face reduced costs when determining whether they can terminate their registration and reporting obligations under the Exchange Act, compared to the originally proposed standards that would have required an issuer to assess the U.S. residence of its security holders.<sup>19</sup>

#### *B. Principal Comments Regarding the Reproposed Rule Amendments*

We received 30 comment letters in response to the repropoed rule amendments.<sup>20</sup> These letters represented the views of over 40 distinct entities, including business, financial and legal associations, foreign companies, financial advisory and accounting firms, law firms, and one foreign government. While the commenters generally strongly supported the trading volume-based approach and other aspects of the repropoed rules, many offered suggestions designed primarily to fine-tune those rules.

We received the most comments concerning the repropoed trading volume benchmark for equity securities issuers. Numerous commenters urged us to adopt a quantitative benchmark that would require an issuer to measure its U.S. ADTV as a percentage of its ADTV for the same class of securities on a worldwide basis, rather than against its ADTV in its primary trading market, as repropoed. Many commenters also requested that we permit an issuer to include off-market transactions when calculating its worldwide ADTV for a class of equity securities, rather than only when calculating its U.S. ADTV, as repropoed. Some commenters further urged us to permit an issuer to include trades conducted through alternative trading systems when determining whether it meets the proposed trading volume benchmark. Still others

requested that we increase the percentage in the trading volume-based measure to a percentage greater than 5 percent, as repropoed, particularly if we did not move to a worldwide ADTV standard.

Commenters expressed concern or requested guidance regarding a number of other issues, including:

- the appropriateness of the proposed provision that would prohibit reliance on the trading volume standard if an issuer has delisted its securities from a U.S. exchange during the preceding 12 months when its U.S. ADTV exceeded the 5 percent threshold;

- the appropriateness of the proposed provision that would prohibit reliance on the trading volume standard if an issuer has terminated a sponsored American Depositary Receipts (ADR) facility<sup>21</sup> during the preceding 12 months, regardless of whether the issuer met the trading volume benchmark at the time of termination;

- whether to include convertible debt and other equity-linked securities in the definition of equity security for purposes of the new exit rule;

- whether a special financial report filed pursuant to Exchange Act Rule 15d-2<sup>22</sup> would constitute an Exchange Act annual report for the purpose of the repropoed prior reporting condition;

- the appropriateness of the repropoed dormancy condition for equity securities registrants,<sup>23</sup> including whether it would prohibit an issuer from conducting a registered offering in which an underwriter has agreed to a standby purchase commitment but only resells the purchased securities outside the United States;

- the appropriateness of the repropoed foreign listing condition for equity securities registrants,<sup>24</sup> including whether it should apply to an issuer relying on the alternative 300 holder provision of Rule 12h-6, and to an

<sup>14</sup> See Part I.C of the Original Proposing Release for a discussion of the concerns raised by foreign private issuers regarding the current Exchange Act exit regime.

<sup>15</sup> For purposes of proposed Rule 12h-6, a "well-known seasoned issuer" meant a well-known seasoned issuer as defined in Securities Act Rule 405 (17 CFR 230.405), which would have required the worldwide market value of an issuer's outstanding voting and non-voting common equity held by non-affiliates to be \$700 million or more.

<sup>16</sup> Under the original rule proposal, a WKSI would have been eligible to terminate its Exchange Act reporting obligations regarding a class of equity securities if the U.S. average daily trading volume ("ADTV") of the subject class of securities had been no greater than 5 percent of the ADTV of that class of securities in its primary trading market during a recent 12 month period, and U.S. residents held no more than 10 percent of the issuer's worldwide public float as of a specified date. A WKSI with greater than 5 percent U.S. ADTV or a non-WKSI would have been eligible for termination of reporting regarding a class of equity securities if, regardless of U.S. trading volume, U.S. residents held no more than 5 percent of the issuer's worldwide public float as of a specified date. See Part II.B.2.d of Release No. 34-53020.

<sup>17</sup> Release No. 34-55005 (December 22, 2006), 72 FR 1384 (January 11, 2007) (Repropoing Release).

<sup>18</sup> We repropoed the rule amendments primarily because the Commission did not fully address this trading volume approach in the Original Proposing Release.

<sup>19</sup> See Parts II.A.1.a and IV of the Repropoing Release.

<sup>20</sup> These comment letters, along with the letters received at the propoing stage, are available on the Commission's Internet Web site, located at <http://www.sec.gov/rules/proposed/s71205.shtml>, and in the Commission's Public Reference Room in its Washington, DC headquarters.

<sup>21</sup> An ADR is a negotiable instrument that represents an ownership interest in a specified number of securities, which the securities holder has deposited with a designated bank depository. Use of an ADR facility makes it easier for a U.S. resident to collect dividends in U.S. dollars. Moreover, because the clearance and settlement process for ADRs generally is the same for securities of domestic companies that are traded in U.S. markets, a U.S. holder of an ADR is able to hold securities of a foreign company that trades, clears and settles within automated U.S. systems and within U.S. time periods.

<sup>22</sup> 17 CFR 240.15d-2.

<sup>23</sup> As repropoed, Rule 12h-6 would prohibit an equity securities registrant from selling its securities in the United States in a registered offering under the Securities Act, except for specified registered offerings, during the 12 months preceding the filing of its Form 15F.

<sup>24</sup> As repropoed, Rule 12h-6 would require an equity securities issuer to have maintained a listing on an exchange in its primary trading market.

issuer that delists from its non-U.S. exchange in connection with being acquired;

- the role of a predecessor in determining a successor issuer's eligibility to terminate its Exchange Act reporting obligations under repropose Rule 12h-6, including whether, under Exchange Act Rule 12g-3(g),<sup>25</sup> a successor issuer would have to file an Exchange Act annual report for the predecessor's most recently completed fiscal year before it could terminate its reporting obligations under Rule 12h-6;
- whether to permit a foreign company that filed a Form 15 previously to terminate or suspend its Exchange Act reporting obligations regarding a class of equity securities before the effectiveness of new Rule 12h-6 to terminate its reporting obligations under the new exit rule without having to recount its holders, as long as it meets that rule's trading volume benchmark;
- whether to increase the threshold number of record holders in the debt securities provision; and
- whether an issuer that has filed a Form 15F<sup>26</sup> solely to terminate its reporting obligations regarding debt securities must wait until the effectiveness of that termination before it can submit an application for the Rule 12g3-2(b) exemption regarding a class of equity securities.

### C. Summary of the Adopted Rule Amendments

We have carefully considered commenters' concerns regarding the repropose rules, and have addressed many of them in the rule amendments that we are adopting today. As adopted, new Exchange Act Rule 12h-6 and the accompanying rule amendments will:

- permit a foreign private issuer, regardless of size, to terminate its Exchange Act registration and reporting obligations regarding a class of equity securities, assuming it meets all the other conditions of Rule 12h-6, if, for a recent 12-month period, the U.S. ADTV of the subject class of securities has been no greater than 5 percent of its worldwide ADTV—rather than 5 percent of the ADTV in its primary trading market, as repropose;
- permit an issuer to include off-market transactions, including transactions through alternative trading systems, when calculating its

worldwide ADTV for a class of equity securities—as discussed in connection with calculating its U.S. ADTV, as repropose—as long as the trading volume information regarding the off-market transactions is reasonably reliable and does not duplicate other trading volume information regarding the subject class of securities;

- require an issuer to wait 12 months before filing its Form 15F in reliance on the trading volume standard if the issuer has delisted its class of equity securities from a national securities exchange or automated inter-dealer quotation system in the United States,<sup>27</sup> or terminated a sponsored ADR facility and, at the time of delisting or termination, the U.S. ADTV of the subject class of securities exceeded 5 percent of its worldwide ADTV for the preceding 12 months;
- retain the 300-holder standard as an alternative to the trading volume standard for an equity securities issuer and as the quantitative standard for a debt securities issuer, as repropose;
- exclude convertible debt and other equity-linked securities from the definition of equity security for the purpose of new Rule 12h-6's trading volume provision;
- require an equity securities registrant to have at least one year of Exchange Act reporting, be current in reporting obligations for that period, and have filed at least one Exchange Act annual report, as repropose;
- permit an issuer to count a special financial report filed pursuant to Exchange Act Rule 15d-2 as an Exchange Act annual report for the purpose of the new rule's prior reporting condition;
- prohibit an issuer of equity securities from selling securities in the United States in a registered offering under the Securities Act, except as specified, during the 12 months preceding the filing of its Form 15F (the "dormancy condition"), substantially as repropose;
- require an issuer of equity securities to have maintained a listing of the subject class of securities for at least the 12 months preceding the filing of its Form 15F on one or more exchanges in a foreign jurisdiction that, either singly or together with the trading of the same class of the issuer's securities in another foreign jurisdiction, constitutes the primary trading market for those securities, substantially as repropose;
- define primary trading market to mean that at least 55 percent of the

trading in a foreign private issuer's class of securities that is the subject of Form 15F took place in, on or through the facilities of a securities market or markets in a single foreign jurisdiction or in no more than two foreign jurisdictions during a recent 12-month period, as long as the trading in at least one of the two foreign jurisdictions is larger than the trading in the United States for the same class of the issuer's securities;

- permit an equity securities issuer relying on the alternative 300-holder standard, or a debt securities issuer, to use a revised counting method that limits the inquiry regarding the amount of securities represented by accounts of customers resident in the United States to brokers, dealers, banks and other nominees located in the United States, the foreign private issuer's jurisdiction of incorporation, legal organization or establishment, and the one or two jurisdictions comprising the issuer's primary trading market if different from the issuer's jurisdiction of incorporation, legal organization or establishment, as repropose;
- permit an issuer of equity or debt securities to rely on the assistance of an independent information services provider when determining whether the issuer falls below the 300-holder standard, as repropose;
- permit a successor issuer meeting specified conditions to terminate its Exchange Act reporting obligations under new Rule 12h-6, as repropose;<sup>28</sup>
- permit a foreign private issuer that filed a Form 15 and suspended or terminated its Exchange Act reporting obligations under the current exit rules before the effective date of Rule 12h-6 to terminate its Exchange Act reporting obligations under new Exchange Act Rule 12h-6, as long as, if regarding a class of equity securities, the issuer meets Rule 12h-6's listing condition and either the trading volume or alternative-300 holder condition or, if regarding a class of debt securities, the issuer meets the rule's 300-holder condition for debt issuers;
- extend the Rule 12g3-2(b) exemption to a foreign private issuer of equity securities, including a successor issuer and prior Form 15 filer, immediately upon its termination of reporting under Rule 12h-6, and require the issuer to maintain that exemption by publishing in English specified material home country documents required by

<sup>25</sup> 17 CFR 240.12g-3(g).

<sup>26</sup> Like current Rules 12g-4 and 12h-3, which require the filing of Form 15, repropose Rule 12h-6 would require the filing of a form—Form 15F—by which an issuer would certify that it meets the conditions for ceasing its Exchange Act reporting obligations.

<sup>27</sup> Neither the OTC Bulletin Board operated by Nasdaq nor the market operated by the Pink Sheets LLC are deemed to be automated inter-dealer quotation systems. See Release 33-6862 (April 23, 1999), n.22.

<sup>28</sup> See Part II.D.1 of this release for clarification regarding the limited role of the predecessor in determining a successor issuer's eligibility to terminate its Exchange Act reporting obligations under Rule 12h-6.

Rule 12g3-2(b)<sup>29</sup> on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, as repropoed;

- permit a non-reporting company that has received or will receive the Rule 12g3-2(b) exemption, upon application to the Commission and not pursuant to Rule 12h-6, to publish its "ongoing" home country documents required under Rule 12g3-2(b) on its Internet Web site or through an electronic information delivery system rather than submit them in paper to the Commission; and

- permit an issuer that has filed a Form 15F to terminate its Exchange Act reporting obligations regarding a class of debt securities to establish the Rule 12g3-2(b) exemption for a class of equity securities upon the effectiveness of its termination of reporting under Rule 12h-6, by submitting an application for the Rule 12g3-2(b) exemption after filing its Form 15F.

We are also adopting, as repropoed, procedural conditions that will:

- require a foreign private issuer to file a Form 15F providing information with respect to whether the issuer meets the requirements for terminating its reporting obligations under Rule 12h-6;

- automatically suspend an issuer's Exchange Act reporting obligations upon the filing of its Form 15F and trigger a 90-day waiting period at the end of which, assuming the Commission has no objections, the suspension will become a termination of reporting; and

- require a foreign private issuer to publish a notice, such as a press release, announcing its intention to terminate its Exchange Act reporting obligations under Rule 12h-6, before or at the time of filing its Form 15F.

We believe the rules that we are adopting today provide meaningful protection of U.S. investors by permitting the termination of Exchange Act registration and reporting only by those foreign registrants with relatively low U.S. market interest in their U.S.-registered securities. Compared to the current exit rules, Rule 12h-6 will establish a more clearly defined process with a more appropriate benchmark by which a foreign private issuer can terminate its Exchange Act reporting obligations. As a result, we believe foreign private issuers should be more willing initially to register their securities with the Commission, which will provide more investment choices for U.S. investors.

<sup>29</sup> See Exchange Act Rule 12g3-2(b)(1)(iii) (17 CFR 240.12g3-2(b)(1)(iii)).

At the same time, we believe the conditions that determine a foreign private issuer's eligibility to terminate its Exchange Act registration and reporting regarding a class of equity securities under new Rule 12h-6 will serve to protect U.S. investors. For example, the prior reporting condition<sup>30</sup> is intended to provide investors with at least one complete year's worth of Exchange Act reports, including an annual report, upon which they can base their investment decisions about a particular foreign registrant before that registrant exits the Exchange Act reporting system. The dormancy condition is designed to deter a foreign private issuer's promotion of U.S. investor interest through recent registered capital-raising shortly before exiting our reporting system. The one year reporting and dormancy conditions are consistent with the statutory requirements under section 15(d).

The foreign listing condition and U.S. trading volume benchmark support our view that, before a foreign private issuer may terminate its Exchange Act reporting obligations under Rule 12h-6, it must have been subject to an ongoing disclosure and financial reporting regime, and have a significant market following, in its primary trading market. We have set the U.S. trading volume benchmark at such a level that, although there may be some U.S. investor interest in the subject securities of an issuer meeting the benchmark, that interest would appear to be sufficiently diminished so that a foreign private issuer should not be required to continue its Exchange Act reporting if it determines that it is no longer desirable to continue as a U.S. registrant.

The condition restricting the ability of an issuer to rely on the trading volume standard under specified circumstances (U.S. delisting and termination of a sponsored ADR facility) should deter an issuer from excluding U.S. investors, particularly retail investors, from investing in their securities when U.S. market interest is still significant. The immediate availability of the exemption under Rule 12g3-2(b) will foster access by U.S. investors to ongoing home country information about an issuer after it terminates its Exchange Act registration and reporting under Rule 12h-6. Finally, the conditions relating to the filing of Form 15F and the publication of a press release or other notice will promote transparency in the exit process.

<sup>30</sup> See p. 12 and Part II.A.2 of this release.

## II. Discussion

### A. Conditions for Equity Securities Issuers

#### 1. Quantitative Benchmarks

##### a. Trading Volume Benchmark

As adopted, new Exchange Act Rule 12h-6 will enable a foreign private issuer of equity securities, regardless of size, to qualify for termination of its Exchange Act reporting by meeting a quantitative benchmark provision that does not depend on the number of its U.S. record holders or the percentage of its securities held by those holders. Under new Rule 12h-6, an issuer will be able to terminate its Exchange Act registration and reporting obligations regarding a class of equity securities, assuming it meets the other conditions of Rule 12h-6, if the ADTV of the subject class of equity securities in the United States has been 5 percent or less of the ADTV of that class of securities on a worldwide basis during a recent 12-month period.<sup>31</sup> This trading volume benchmark is substantially similar to the repropoed standard, except that the adopted benchmark requires an issuer to measure its U.S. ADTV as a percentage of its worldwide ADTV rather than the ADTV in its primary trading market.

A threshold matter in this regulatory initiative has been what is the most appropriate benchmark for equity securities that would best serve the interests of investors and issuers, and most commenters addressed this issue. Most of the commenters agreed that a benchmark based solely on trading volume is superior to one based on a combination of U.S. public float and trading volume criteria or just U.S. public float data, as under the originally proposed Rule 12h-6, or one based on the number of record holders in the United States or on a worldwide basis, as under the current exit rules. Most commenters stressed that trading volume data is easier to obtain and confirm than is the data required for a U.S. public float or record holder determination.<sup>32</sup> As commenters have noted, it is difficult for a reporting foreign private issuer to determine accurately the specific country of residence of its investors.<sup>33</sup> Because a public float benchmark would require such a determination to varying degrees, most commenters agreed with our conclusion that the repropoed trading

<sup>31</sup> New Exchange Act Rule 12h-6(a)(4)(i) (17 CFR 240.12h-6(a)(4)(i)).

<sup>32</sup> See, for example, the letter, dated February 12, 2007, from Cleary Gottlieb, Steen & Hamilton LLP (Cleary Gottlieb).

<sup>33</sup> See the comment letters discussed in Part II.A.1.a of the Repropoed Release.

volume-based benchmark should result in reduced costs to issuers in determining whether they can terminate their Exchange Act reporting obligations.<sup>34</sup>

Some commenters supported the repropoed trading volume measure because it would provide a simple and clear measure of the degree of U.S. market interest in an issuer's equity securities.<sup>35</sup> Some commenters expressed the view that basing the new exit rule on a trading volume measure would help ensure that an issuer's termination of Exchange Act registration and reporting would not have a significant impact on the primary price-setting determinants of an issuer's equity securities, which would allow for U.S. investors to trade in that issuer's securities following its U.S. deregistration.<sup>36</sup>

Commenters expressed their belief that adoption of the repropoed trading volume standard would enable significantly more foreign private issuers to exit the Exchange Act reporting regime if they so desire.<sup>37</sup> Consequently, as one commenter indicated, by removing restrictions regarding the ability to exit U.S. securities markets, adoption of new Rule 12h-6 and the accompanying amendments will have a major impact on the perception that foreign companies have of those markets, making the U.S. capital markets "much more attractive and competitive on an international scale."<sup>38</sup>

For the above reasons, we are adopting a quantitative exit standard for equity securities registrants based solely on trading volume instead of one based on a combination of trading volume and public float criteria or just public float data. We also are adopting, as repropoed, one trading volume standard that will apply to all issuers of equity securities. Commenters generally supported having one benchmark applicable to any foreign private issuer, regardless of size.<sup>39</sup> Although we originally proposed a set of quantitative benchmarks that depended primarily on whether an issuer was a WKSII, we are

adopting the same trading volume standard for a smaller issuer as for a larger issuer in order to provide increased flexibility and simplification to the Exchange Act deregistration regime, and for the other reasons discussed in the Reproposing Release.<sup>40</sup>

#### i. Calculation of the U.S. Trading Volume Benchmark as a Percentage of Worldwide Trading Volume Instead of Primary Trading Market Trading Volume

Numerous commenters requested that the Commission calculate U.S. trading volume as a percentage of worldwide trading volume rather than as a percentage of ADTV in the issuer's primary trading market,<sup>41</sup> as repropoed.<sup>42</sup> The primary rationale for this request is that, with the increased globalization of securities markets, many issuers now trade on multiple non-U.S. markets. According to these commenters, since the goal of the repropoed trading volume benchmark is to determine the relative importance of the U.S. trading market for an issuer's securities, an issuer should be able to take into account all non-U.S. trading in its securities, and not just the trading that has occurred in the one or two jurisdictions comprising its primary trading market.<sup>43</sup>

Some commenters maintained that, while it is reasonable to base Rule 12h-6's foreign listing condition on the repropoed primary trading market definition, it is not so for the trading volume benchmark.<sup>44</sup> As discussed below, the purpose of the foreign listing condition is to help assure that there is

<sup>40</sup> For example, a trading volume standard that favored WKSIs could discourage smaller foreign companies from entering U.S. public capital markets, to the detriment of U.S. investors. Moreover, commenters at the proposing stage noted that the costs of continued Exchange Act reporting fall disproportionately on smaller issuers. See Part II.A.1.a of the Reproposing Release.

<sup>41</sup> As discussed in Part II.A.4 of this release, we define primary trading market to mean that at least 55 percent of the trading in a foreign private issuer's subject class of securities took place in, on or through the facilities of a securities market or markets in a single foreign jurisdiction or in no more than two foreign jurisdictions during a recent 12-month period. If an issuer aggregates the trading in two foreign jurisdictions, the trading market for the issuer's securities in at least one of the two foreign jurisdictions must be larger than the United States trading market for the same class of the issuer's securities. We proposed a substantially similar definition at the repropoing stage.

<sup>42</sup> See, for example, the letter, dated February 8, 2007, from BusinessEurope, the letters, dated February 12, 2007, from Davis Polk & Wardwell (Davis Polk), Linklaters, and Makinson Cowell, and the letters from Cleary Gottlieb, EALIC, and the EU. In contrast, only one commenter opposed using worldwide trading volume. See the letter from Galileo.

<sup>43</sup> See the letters from Cleary Gottlieb and EALIC.

<sup>44</sup> See the letter from Linklaters.

a non-U.S. jurisdiction that principally regulates and oversees the issuance and trading of the issuer's securities and the issuer's disclosure obligations to investors.<sup>45</sup> Limiting the definition of primary trading market in this context to no more than two jurisdictions helps to further the purpose of the foreign listing condition. In contrast, the purpose of the trading volume benchmark is to measure the relative U.S. market interest in a foreign private issuer's equity securities. Accounting for as much of the issuer's trading as is reasonably possible would further the purpose of this rule.

We agree that, in light of the number of foreign registrants that have listings in more than two jurisdictions, and given the purpose of the trading volume benchmark, measuring an issuer's U.S. ADTV as a percentage of its worldwide ADTV would increase the likelihood of obtaining a more accurate measure of relative U.S. market interest for that issuer's equity securities. Therefore, we are adopting a trading volume benchmark for new Rule 12h-6 that will require an issuer to use as the denominator of its trading volume calculation its worldwide ADTV for the subject class of securities.<sup>46</sup>

#### ii. Inclusion of Off-Market Transactions in the Trading Volume Calculation

We repropoed to require an issuer to include both transactions occurring on a stock exchange and over-the-counter trades for the purpose of calculating U.S. ADTV for the numerator of the trading volume benchmark, but to include only on-exchange transactions for the purpose of calculating its ADTV for the denominator (its primary trading market, as repropoed). We did so based on our belief that trading volume information about over-the-counter trades was more readily available in the United States than in many foreign jurisdictions.

Numerous commenters<sup>47</sup> urged the Commission to permit an issuer to include "off-market" transactions when determining whether it meets the 5

<sup>45</sup> See Part II.A.4 of this release.

<sup>46</sup> Worldwide ADTV includes U.S. ADTV. Some commenters favored a trading measure based on the dollar value of shares traded rather than on the number of shares traded. See the letter, dated February 12, 2007, from Ziegler, Ziegler and Associates (Ziegler) and the letter from Galileo. We decline to adopt a trading value measure because we believe that it would add an unnecessary level of complexity and cost to the non-record holder determination.

<sup>47</sup> See the letters from BusinessEurope, Cleary Gottlieb, Davis Polk, EALIC, the EU, Makinson Cowell, and Sullivan & Cromwell, and the letters, dated February 12, 2007, from the International Bar Association and Skadden Arps Slate Meagher & Flom (Skadden Arps).

<sup>34</sup> See, for example, the letter, dated February 12, 2007, from the European Association for Listed Companies and other signatories (EALIC).

<sup>35</sup> See, for example, the letter, dated February 12, 2007, from Sullivan & Cromwell LLP (Sullivan & Cromwell) and the letter, dated January 2, 2007, from Galileo Global Advisors (Galileo).

<sup>36</sup> See, for example, the letter from Cleary Gottlieb.

<sup>37</sup> See, for example, the letter, dated February 12, 2007, from the European Commission.

<sup>38</sup> See the letter from Cleary Gottlieb.

<sup>39</sup> See, most recently, the letter, dated February 23, 2007, from the American Bar Association, Section of Business Law (ABA).

percent trading volume standard, rather than just transactions occurring on a stock exchange, as repropoed. These commenters maintained that it was inappropriate to require an issuer to include both on-exchange and off-exchange transactions when calculating its U.S. ADTV but not when calculating its worldwide trading volume. As noted by some of these commenters, members of Euronext markets are currently required to report off-market transactions.<sup>48</sup> Moreover, some commenters noted that an EU Directive,<sup>49</sup> scheduled for effectiveness in November 2007, will generally require the reporting of off-market transactions, which will make information regarding off-market transactions generally available in Europe the same way that such information is available through a transaction reporting plan in the United States.<sup>50</sup>

Some of these commenters urged the Commission to permit an issuer to include not only off-market transactions that currently occur through traditional over-the-counter means, but those that may occur through alternative trading systems.<sup>51</sup> According to these commenters, MiFID will encourage the development of such trading systems.<sup>52</sup> These commenters stated that, as long as trading information is credible and the sources reliable, an issuer should be able to include information about securities transactions regardless of the platform on which they occur.<sup>53</sup>

Some commenters requested that, if the Commission does not permit an issuer to include off-market transactions when determining its worldwide trading volume for the denominator of its trading volume calculation, it should also prohibit the inclusion of off-market transactions when determining its U.S. ADTV for the numerator of that calculation.<sup>54</sup> In contrast, one commenter, which favored a worldwide trading volume measure, expressly requested that the Commission prohibit the inclusion of off-market transactions for both the numerator and denominator because of the difficulty of obtaining over-the-counter trading information.<sup>55</sup>

<sup>48</sup> See, for example, the letter from Cleary Gottlieb.

<sup>49</sup> Directive 2004/39/EC, also known as the Market in Financial Instruments Directive (MiFID).

<sup>50</sup> See the letters from Cleary Gottlieb, the EU, and BusinessEurope.

<sup>51</sup> See the letters from the EU and Davis Polk.

<sup>52</sup> See, for example, the EU letter.

<sup>53</sup> See, for example, the letter from Davis Polk.

<sup>54</sup> See the letters from BusinessEurope and the EU.

<sup>55</sup> See the letter from Skadden Arps.

These comments have persuaded us that, for at least some foreign private issuers, information regarding off-exchange transactions in non-U.S. jurisdictions will be readily obtainable. Therefore, under adopted Rule 12h-6, when making its trading volume determination, an issuer must include in its calculation of U.S. ADTV both on-exchange and off-exchange transactions, as repropoed. For both on-exchange and off-exchange transactions in the United States, we expect an issuer to be able to obtain relevant trading volume information as reported pursuant to an effective transaction reporting plan,<sup>56</sup> pursuant to NASD rules,<sup>57</sup> or reported by a national securities exchange otherwise than pursuant to an effective transaction reporting plan. In addition, an issuer may include in its calculation of worldwide ADTV off-market transactions, including transactions conducted through alternative trading systems, in addition to transactions occurring on an exchange, as long as an issuer has obtained the information concerning the off-market transactions from publicly available sources or third-party information service providers, upon which the issuer has reasonably relied in good faith, and as long as the off-market transaction information does not duplicate any other trading volume information obtained.

In response to our request for comments on whether issuers should be required to obtain trading volume data from particular sources, a number of commenters advocated that the final rules provide issuers with sufficient flexibility to use such data sources as they deem reliable and appropriate.<sup>58</sup> The adopted rules do not specify any particular data sources that issuers must use to determine either its U.S. or worldwide trading volume. In this respect, when obtaining information concerning either on-exchange or off-exchange transactions, issuers will have the latitude to use market data vendors or other commercial service providers and publicly available sources of market information that they reasonably believe

<sup>56</sup> Rule 601 of Regulation NMS (17 CFR 242.601) requires every national securities exchange to file a transaction reporting plan regarding transactions in listed equity and Nasdaq securities.

<sup>57</sup> See, for example, NASD Manual Rule 6600 *et seq.* for rules regarding recording and reporting transactions in OTC Equity Securities. A member broker-dealer must report information concerning OTC trades not involving a listed security, including a Nasdaq security, under the NASD rules rather than pursuant to a transaction reporting plan since the latter only covers unlisted transactions involving listed (and Nasdaq) securities.

<sup>58</sup> See, for example, the letters from Cleary Gottlieb and EALIC.

to be reliable and that do not duplicate trading volume information obtained from other sources, such as various exchanges or markets.<sup>59</sup> Issuers will be required to disclose their trading volume data sources on Form 15F, which will inform investors of the data sources used.<sup>60</sup>

#### iii. The 5 Percent Trading Volume Measure

Commenters expressed a variety of views on whether 5 percent U.S. ADTV was the appropriate threshold for the trading volume benchmark. Although some commenters requested that the Commission increase the percentage to 10 percent ADTV,<sup>61</sup> many others supported the 5 percent threshold.<sup>62</sup> Moreover, some of the commenters that requested an increase to 10 percent did so only if the Commission decided not to adopt a world-wide trading based benchmark.<sup>63</sup>

We believe that adoption of the “5 percent of worldwide trading volume” standard will permit foreign companies with relatively little U.S. market interest to deregister.<sup>64</sup> Moreover, by permitting an issuer to include both on-exchange and off-exchange transactions when calculating its worldwide ADTV, we have addressed the concerns of commenters who suggested the 5 percent threshold could be too low to achieve the rule’s purpose of reducing the disincentive to U.S. registration that may be caused by the current exit regime.

#### iv. Definition of Equity Securities

We repropoed that, for purposes of new Rule 12h-6, an issuer would use the definition of equity security provided in Exchange Act Rule 3a11-1.<sup>65</sup> That provision includes equity-linked securities, such as convertible debt securities and warrants, within the definition of equity security. Several commenters<sup>66</sup> requested that the Commission exclude equity-linked securities from the definition of equity

<sup>59</sup> See Instruction 3.c to Item 4 of Form 15F.

<sup>60</sup> See Item 4.F of Form 15F.

<sup>61</sup> See the letter, dated February 9, 2007, from SGL Carbon, the letter, dated February 12, 2007, from Fried Frank Harris Shriver & Jacobson (Fried Frank), and the letter from Skadden Arps. Another commenter requested an increase to 15 percent. See the letter from i-CABLE Communications Ltd. (i-CABLE).

<sup>62</sup> See the letters from Cleary Gottlieb, EALIC, Galileo, Sullivan & Cromwell, and the New York State Society of Certified Public Accountants (NYSSCPA).

<sup>63</sup> See the letters from the ABA, BusinessEurope, and Linklaters.

<sup>64</sup> See Part III, n. 191 of this release.

<sup>65</sup> 17 CFR 240.3a11-1.

<sup>66</sup> See the letters from BusinessEurope, the EU, EALIC and Cleary Gottlieb.

security on the grounds that trading volume information for equity-linked securities is difficult to obtain. One commenter suggested using instead the definition of equity security provided in the Securities Act cross-border rules, which explicitly excludes convertible debt and other equity-linked securities.<sup>67</sup>

We agree with those commenters that, because trading volume information concerning convertible debt and other equity-linked securities is more difficult to obtain than trading volume information for the underlying equity securities, an issuer should not have to include equity-linked securities when determining whether it meets the trading volume benchmark. The same reasoning applies to an issuer's determination concerning the foreign listing condition, which requires an issuer to meet the definition of primary trading market, which is a trading volume-based definition.<sup>68</sup> Therefore, we are adopting a definition of equity security that is based on Rule 3a11-1, except that, for purposes of the trading volume and foreign listing provisions of Rule 12h-6, the definition explicitly excludes:

- any debt security that is convertible into an equity security, with or without consideration;
- any debt security that includes a warrant or right to subscribe to or purchase an equity security;
- any such warrant or right; or
- any put, call, straddle, or other option or privilege that gives the holder the option of buying or selling a security but does not require the holder to do so.<sup>69</sup>

#### v. One Year Ineligibility Period After Delisting

We are adopting, substantially as proposed, a condition to the use of Rule 12h-6's trading volume standard and corresponding eligibility to file Form 15F. This condition provides that if a foreign private issuer has had its equity securities delisted from a registered national securities exchange or automated inter-dealer quotation system within one year before filing the Form 15F, it must have satisfied the trading volume percentage as of the date of delisting, as measured over the 12

months preceding the date of delisting.<sup>70</sup> Under this condition:

- a listed foreign private issuer that satisfied the trading volume condition will be able to delist from its stock exchange and terminate its Exchange Act registration and reporting obligations concurrently; and
- a listed foreign private issuer that did not satisfy the trading volume condition will be able to delist but will not be eligible to file a Form 15F and terminate its Exchange Act registration and reporting obligations until one year after the date of delisting, assuming that, at that time, it meets the conditions of the rule.<sup>71</sup>

We are adopting this condition in order to prevent the new trading volume-based rule from creating an incentive for a foreign private issuer to delist its securities from a U.S. exchange for the purpose of decreasing its U.S. trading volume. As one commenter suggested early on, if we were to adopt a standard based solely on trading volume, a foreign private issuer that delisted its securities from a U.S. exchange before its trading volume fell below the applicable percentage should not be eligible to terminate its registration under such a standard.<sup>72</sup>

A few commenters requested that the Commission remove this delisting condition on the grounds that it imposed a restraint on the use of the new exit rule that was not necessary for the protection of U.S. investors.<sup>73</sup> We agree that companies should not be unnecessarily restricted in choosing the markets on which their securities are listed. Thus, we do not believe that delisting from a U.S. exchange should result in an automatic bar against a foreign private issuer from using the new exit rule. Nonetheless, we share the

<sup>70</sup> New Exchange Act Rule 12h-6(b)(1) (17 CFR 240.12h-6(b)(1)). We previously proposed to codify this delisting requirement, along with a similar requirement concerning termination of a sponsored ADR facility, as Notes to paragraph (a)(4) of re-proposed Rule 12h-6. We have restructured final Rule 12h-6 to provide for these requirements in a separate paragraph and have changed the paragraph numbering of the adopted rule accordingly. As adopted, Rule 12h-6(b) does not apply to issuers terminating their reporting obligations under either Rule 12h-6(d) (the successor issuer provision) or Rule 12h-6(i) (the prior Form 15 filer provision).

<sup>71</sup> For example, an issuer that failed to meet the trading volume standard at the date of delisting would have to meet the trading volume standard one year later when filing its Form 15F. If, notwithstanding its delisting, an active U.S. over-the-counter market in the company's securities continued, the company would not be eligible to use Rule 12h-6 and file a Form 15F in reliance on the trading volume benchmark.

<sup>72</sup> See the letter, dated February 9, 2004, from Cleary Gottlieb.

<sup>73</sup> See the letters from Galileo, Makinson Cowell and SGL Carbon.

concern about possible negative impacts on U.S. investors stemming from a measure based solely on trading volume. Moreover, by requiring companies to remain registered and reporting under the Exchange Act for a period of time after delisting when, before delisting, the company had a relatively active U.S. market for its securities, U.S. investors will have access to information prepared in accordance with the Commission's financial reporting and disclosure requirements for a period of time during which, most likely, the U.S. market will be diminishing. Accordingly, we are adopting the delisting condition substantially as proposed.<sup>74</sup>

#### vi. One Year Ineligibility Period After Termination of Sponsored ADR Facility

As part of the rule re-proposal, we proposed an additional condition to an issuer's use of Rule 12h-6 and eligibility to file Form 15F in reliance on the trading volume provision. That condition provided that a foreign private issuer must not have terminated any sponsored ADR facility within the 12 month period before filing its Form 15F. We proposed that condition in order to encourage foreign private issuers to maintain their ADR facilities, even after they delist from a U.S. market and terminate their Exchange Act reporting obligations.

After a foreign private issuer delists and deregisters, investors will benefit if its ADRs continue to be traded in the over-the-counter market in the United States. The termination of ADR facilities has a detrimental impact on holders, imposing fees and other charges on investors and, when investors are cashed out, subjecting investors to unplanned tax consequences and limiting their investment choices.<sup>75</sup> In addition, the termination of ADR facilities will limit the ability of many U.S. investors to effect transactions in

<sup>74</sup> Some commenters requested that we exempt from the delisting condition an issuer that has been involuntarily delisted. See, for example, the letter, dated February 22, 2007, from Cravath, Swaine & Moore (Cravath). We decline to do so since such an exemption could encourage an issuer not to comply with exchange standards in order to get delisted.

<sup>75</sup> When an issuer terminates its ADR facility, the holders of ADRs generally have the option to make arrangements to hold the underlying securities directly. However, if holders are unable or unwilling to make these arrangements, or to pay the costs associated with these arrangements, the holders will have their investment cashed out, that is, the underlying securities will generally be sold into the home market and the net proceeds (after deducting fees and expenses of the selling broker and the depository bank) remitted to the former ADR holders.

<sup>67</sup> See the letter from Cleary Gottlieb, which cites Securities Act Rule 800(b) (17 CFR 230.800(b)).

<sup>68</sup> See Part II.A.4 of this release.

<sup>69</sup> New Exchange Act Rule 12h-6(f)(3) (17 CFR 240.12h-6(f)(3)). These are the same categories of securities excluded from the definition of equity security under Securities Act Rule 800(b).

the securities of the subject foreign company.

Some commenters opposed the ADR facility termination condition on grounds similar to those raised against the delisting condition. However, these commenters also objected to the fact that, unlike the delisting condition, the proposed ADR facility condition applied regardless of whether, at the time of termination of its ADR facility, an issuer met the trading volume threshold measured for the previous 12 months.<sup>76</sup> One commenter stated that adoption of the reposed condition could dissuade issuers from sponsoring ADR programs, to the detriment of U.S. investors.<sup>77</sup>

We continue to believe that, due to the importance of ADR facilities for U.S. investors, a sponsored ADR facility termination condition is appropriate. However, we agree with commenters that the importance of this concern significantly diminishes if, at the time of its termination of a sponsored ADR facility, an issuer's U.S. ADTV has already fallen below the trading volume threshold.

Therefore, we are adopting a condition providing that, if an issuer has terminated a sponsored ADR facility, and at the time of termination the average daily trading volume in the United States of the ADRs exceeded 5 percent of the average daily trading volume of the underlying class of securities on a worldwide basis for the preceding 12 months, the issuer must wait 12 months before it may file a Form 15F to terminate its Exchange Act reporting obligations in reliance on Rule 12h-6's trading volume provision.<sup>78</sup> We are also clarifying that, for purposes of Rule 12h-6's trading volume provision, an issuer must calculate the trading volume of its ADRs in terms of the number of securities represented by those ADRs.<sup>79</sup>

#### vii. Transition Period

In connection with our reproposal of Rule 12h-6, we solicited comment on whether the proposed delisting and ADR termination conditions should apply to a foreign private issuer that delisted its equity securities from a U.S. exchange or terminated a sponsored

ADR facility before the effective date of the new exit rule. One commenter<sup>80</sup> requested that neither provision apply to an issuer that delisted or terminated a sponsored ADR facility before December 13, 2006, which is the date of the open meeting at which the Commission voted to repropose Rule 12h-6 and the accompanying rule amendments.

We agree that, in the interests of fairness, an issuer should not be precluded from relying on Rule 12h-6's trading volume provision because it delisted or terminated a sponsored ADR facility before the Commission had even proposed to make those acts meaningful to the application of Rule 12h-6. However, we believe that March 21, 2007 should be the dispositive date since, on that date, the Commission voted to adopt the delisting and ADR termination conditions, thus making definite its intent that those conditions apply to Rule 12h-6's trading volume provision.

Therefore, a foreign private issuer that, before March 21, 2007, delisted a class of equity securities from a national securities exchange or inter-dealer quotation system in the United States or terminated a sponsored ADR facility, may file a Form 15F in reliance on Rule 12h-6's trading volume provision even if, at the time of delisting or termination, its U.S. ADTV exceeded 5 percent of the ADTV of that class of securities on a worldwide basis for the preceding 12 months.

#### b. Alternative 300-Holder Condition

We are adopting, substantially as reposed, an alternative to the trading volume benchmark provision, which will permit a foreign private issuer to terminate its Exchange Act reporting obligations regarding a class of equity securities if it has less than 300 record holders on a worldwide basis or who are U.S. residents as long as the issuer meets the rule's other conditions.<sup>81</sup> The purpose of this alternative 300-holder condition is to enable an issuer to terminate its Exchange Act reporting obligations if it cannot satisfy the new trading volume benchmark but does meet the current 300-holder standard. Otherwise, an issuer could find itself worse off under Rule 12h-6 than under the current exit rules.<sup>82</sup>

The adopted alternative record holder condition is substantially the same as the proposed and reposed condition. Although at the proposing stage, some commenters requested that the Commission significantly raise the 300-holder threshold in both the Exchange Act exit and entrance rules, and a few made a similar request at the reposing stage,<sup>83</sup> we decline to adopt an increase to the 300-holder threshold for foreign private issuers either in the exit or entrance rules at this time. As we previously stated, the limited purpose for retaining the 300-holder provision in the new exit rule is to preclude disadvantaging those companies that could terminate their Exchange Act reporting obligations under the current exit rules but not under the new trading volume condition.<sup>84</sup> Moreover, since domestic registrants are subject to a substantially similar record holder standard, we believe any change would be more appropriately considered as part of a comprehensive evaluation of the record holder provisions in both the Exchange Act entrance and exit rules for both domestic and foreign registrants.<sup>85</sup> In addition, issuers relying on the alternative holder provision will be able to use the revised counting method that we are adopting today, which should make the U.S. holder determination easier for those issuers.<sup>86</sup>

#### 2. Prior Exchange Act Reporting Condition

We are adopting, substantially as reposed, a prior Exchange Act reporting condition that a foreign private issuer must meet before it can terminate its section 12(g) registration or its section 15(d) reporting obligations regarding a class of equity securities under Rule 12h-6.<sup>87</sup> This condition will require an issuer of equity securities to have had reporting obligations under section 13(a) or section 15(d) of the Exchange Act for at least the 12 months preceding the filing of Form 15F, to have filed or furnished all reports required for this period, and to have filed at least one annual report pursuant

relied on that provision due to the difficulty in meeting the asset test.

<sup>83</sup> See the letters from the ABA and the Organization for International Investment.

<sup>84</sup> See Part II.A.1.b of the Reposing Release.

<sup>85</sup> In this regard, we note that the Advisory Committee on Smaller Public Companies has made recommendations relating to Exchange Act registration and termination of registration. See the Final Report of the Advisory Committee on Smaller Public Companies, dated April 23, 2006, which is available at <http://www.sec.gov/info/smallbus/acspc/acspc-finalreport.pdf>.

<sup>86</sup> See Part II.C of this release.

<sup>87</sup> New Exchange Act Rule 12h-6(a)(1) (17 CFR 240.12h-6(a)(1)).

<sup>76</sup> See, for example, the letter, dated February 12, 2007, from the New York State Bar Association (N.Y. State Bar), and the letters from the ABA and Linklaters.

<sup>77</sup> See the letter from the N.Y. State Bar.

<sup>78</sup> New Exchange Act Rule 12h-6(b)(2) (17 CFR 240.12h-6(b)(2)).

<sup>79</sup> Note to paragraph (a)(4) of Rule 12h-6. Typically the ratio defining the number of common or ordinary shares underlying each ADR is included as part of the deposit agreement or in an exhibit to that agreement.

<sup>80</sup> See the letter from the ABA.

<sup>81</sup> New Exchange Act Rule 12h-6(a)(4)(ii) (17 CFR 240.12h-6(a)(4)(ii)).

<sup>82</sup> We did not originally propose or repropose a similar 500 record holder condition, although one exists in the current rules for a small issuer with total assets that have not exceeded \$10 million for its most recent three fiscal years. Based on current experience, most foreign private issuers have not

to section 13(a) of the Exchange Act. The purpose of this prior Exchange Act reporting condition is to provide investors in U.S. securities markets with a minimum period of time to make investment decisions regarding a foreign private issuer's securities based on the information provided in an Exchange Act annual report and the interim home country materials furnished in English under cover of Form 6-K.<sup>88</sup>

Originally proposed Rule 12h-6 would have required a foreign private issuer to have had Exchange Act reporting obligations for the two years preceding the filing of its Form 15F and to have filed at least two Exchange Act annual reports before it could terminate its Exchange Act reporting obligations regarding a class of equity securities. As previously noted, several commenters objected to this two year reporting condition primarily on the grounds that it would impose a stricter reporting requirement than is the case under the current exit rules.<sup>89</sup> In response to those commenters, when reproposing Rule 12h-6, we reduced the required prior reporting period to at least 12 months and proposed to require only one Exchange Act annual report.

We received only a few comments on the reproposed prior reporting condition for equity security issuers. One commenter supported the revisions made to the proposed prior reporting condition but urged the Commission to permit an issuer to terminate its Exchange Act reporting obligations regarding a class of equity securities even if it has not submitted all required Form 6-Ks.<sup>90</sup> That commenter pointed to the difficulties that a foreign private issuer may experience when determining whether a Form 6-K submission is required under foreign reporting and U.S. materiality requirements.

As adopted, Rule 12h-6 will require a foreign private issuer to have submitted all Form 6-Ks required during the 12 months preceding the filing of its Form 15F in order to be eligible to terminate its reporting obligations regarding a class of equity securities. This requirement will help ensure that a U.S. investor is able to access through EDGAR<sup>91</sup> and in English all material interim information about a

foreign private issuer as required by its home country. We continue to believe that our rules should provide appropriate incentives for companies to stay current with their Exchange Act reporting obligations.

From a practical point of view, the 12-month prior reporting requirement should not be problematic since, based on current experience, most foreign companies that register securities with the Commission, including solely under Exchange Act section 12(g), stay in the U.S. market for at least a year and file at least one Exchange Act annual report.<sup>92</sup> Moreover, the prior reporting condition will require that a foreign private issuer must be current in its reporting obligations, not that it must have timely filed all reports required during the 12 month period. In the event that an issuer determines that it should have filed a Form 6-K during this period, it can do so before it files its Form 15F.

Another commenter<sup>93</sup> requested that we permit an issuer to satisfy the prior Exchange Act annual report requirement by filing a special financial report required under Exchange Act Rule 15d-2.<sup>94</sup> We agree that it would be appropriate to have the special financial report satisfy the annual report filing requirement under new Rule 12h-6(a)(1). In this situation, an issuer will have recently sold securities under an effective Securities Act registration statement with non-financial information as current as the date of the prospectus, and the information in the special financial report will provide financial statements and other information as of and for the most recent fiscal year end, thus serving the same purpose as an Exchange Act annual report.

In addition, this approach is consistent with our recent implementation rules for the internal control over financial reporting requirements mandated by Section 404 of the Sarbanes-Oxley Act of 2002.<sup>95</sup> Accordingly, we are clarifying that a special financial report, filed with the Commission pursuant to Rule 15d-2, constitutes an Exchange Act annual report for the purpose of complying

with Rule 12h-6's prior reporting condition.

### 3. One Year Dormancy Condition

We are adopting, as reproposed, a one year dormancy condition with which a foreign private issuer must comply before it can terminate its Exchange Act registration and reporting obligations regarding a class of equity securities under Rule 12h-6.<sup>96</sup> New Rule 12h-6 will prohibit sales of a foreign private issuer's securities in the United States in a registered offering under the Securities Act during the 12 months preceding the filing of its Form 15F other than securities issued:

- to the issuer's employees;
- by selling security holders in non-underwritten offerings;
- upon the exercise of outstanding rights granted by the issuer if the rights are granted pro rata to all existing security holders of the class of the issuer's securities to which the rights attach;
- pursuant to a dividend or interest reinvestment plan; or
- upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer.

The primary purpose of the dormancy condition's prohibition of registered offerings is to preclude a foreign private issuer from exiting the Exchange Act reporting system shortly after it has engaged in U.S. public capital raising.

We received relatively few comments on the reproposed dormancy condition.<sup>97</sup> Most welcomed the revisions made to the originally proposed dormancy condition.<sup>98</sup> For example, the originally proposed rule would have prohibited sales of unregistered securities, with limited exceptions. We removed this prohibition when reproposing Rule 12h-6 after commenters convinced us that adoption of the originally proposed dormancy condition could well drive many private placement financings and other unregistered offerings by foreign companies offshore, to the detriment of U.S. investors and U.S. broker-dealers, since many companies might prefer to finance outside the United States under Regulation S in order to avoid triggering the dormancy condition. Consequently, as reproposed, the adopted rule will permit the unregistered sale of securities that are exempted under the Securities

<sup>88</sup> See, for example, the letter from Galileo.

<sup>89</sup> See the letter from Sullivan & Cromwell.

<sup>90</sup> 17 CFR 240.15d-2. This rule requires an issuer that filed a Securities Act registration statement, which did not contain audited financial statements for the last full fiscal year preceding the year in which the registration statement became effective, to file a special financial report with the Commission that includes audited financials for that last full fiscal year.

<sup>91</sup> 15 U.S.C. 7262. See Release No. 33-8760 (December 15, 2006), 71 FR 76580 (December 21, 2006).

<sup>92</sup> New Exchange Act Rule 12h-6(a)(2) (17 CFR 240.12h-6(a)(2)).

<sup>93</sup> See the letters from the ABA, Linklaters, the N.Y. State Bar, Sullivan & Cromwell, and Skadden Arps.

<sup>94</sup> See the letters from the ABA, Skadden Arps, and Sullivan & Cromwell.

<sup>88</sup> Under cover of a Form 6-K (17 CFR 249.306), a foreign private issuer is required to furnish in English a copy of any document that it publishes or is required to publish under the laws of its home country or the requirements of its local exchange or that it has distributed to shareholders, and which is material to an investment decision.

<sup>89</sup> See Part II.A.2 of the Reproposing Release.

<sup>90</sup> See the letter from the ABA.

<sup>91</sup> EDGAR is the Commission's Electronic Data Gathering, Analysis and Retrieval System.

Act during the dormancy period. The permitted category of securities will include sales pursuant to section 4(2),<sup>99</sup> Regulation D,<sup>100</sup> Rule 144A,<sup>101</sup> Rules 801 and 802,<sup>102</sup> and exempt securities under section 3, including section 3(a)(10) of the Securities Act.<sup>103</sup>

Some of the comments pertained to additional proposed exceptions to the dormancy condition. As originally proposed, Rule 12h-6 would have excepted from the dormancy condition's prohibition of sales of an issuer's registered securities in the United States only securities sold to an issuer's employees and those sold by selling security holders in non-underwritten offerings. When repropounding Rule 12h-6, we proposed three additional exceptions to the dormancy condition's prohibition of sales of an issuer's registered securities: the issuance of registered securities pursuant to pro rata rights offerings, dividend or interest reinvestment plans, and the conversion of outstanding convertible securities.<sup>104</sup> Like the earlier proposed exceptions, these transactions often occur for reasons unrelated to capital raising or for the benefit of the issuer, for example, to benefit current security holders or for the convenience of investors.

We also repropounded that these additional exceptions would not apply to securities issued pursuant to a standby underwritten offering or other similar arrangement in the United States. As we explained, this limitation is consistent with the Commission's previous treatment of these types of registered offerings.<sup>105</sup>

Two commenters requested that we clarify that an issuer would not trigger the dormancy condition if it conducted a registered offering involving, for example, a rights offering, in the United States, with a standby underwriting arrangement according to which the underwriter only resold the securities purchased in the offering outside the United States pursuant to Regulation S.<sup>106</sup> We agree that this type of standby underwritten arrangement would not trigger the dormancy condition since it would not increase an issuer's involvement in public capital raising in the United States.

Also as repropounded, the adopted rule includes under the dormancy condition

sales of an issuer's securities by its selling security holders in an underwritten registered offering because there is a greater likelihood of issuer involvement in a U.S. underwritten offering than in a non-underwritten offering of selling security holders.

New Exchange Act Rule 12h-6 will use the definition of "employee" under Form S-8<sup>107</sup> for the purpose of applying the dormancy condition under Rule 12h-6, as repropounded.<sup>108</sup> That definition includes any employee, director, general partner, certain trustees, certain insurance agents, and former employees as well as executors, administrators or beneficiaries of the estates of deceased employees, and a family member of an employee who has received shares through a gift or domestic relations order.<sup>109</sup> Otherwise, a narrow interpretation of the term "employee" could result in an issuer being disqualified from terminating its Exchange Act registration and reporting obligations under Rule 12h-6 because it engaged in a sale of securities during the dormancy period to an employee's family member or other relationship permitted under Form S-8 but not explicitly allowed under the new rule.

#### 4. Foreign Listing Condition

We are adopting a foreign listing condition under Rule 12h-6, which will require that, with respect to equity securities, for at least the 12 months preceding the filing of its Form 15F, a foreign private issuer must have maintained a listing of the subject class of securities on one or more exchanges in a foreign jurisdiction that, either singly or together with the trading of the same class of the issuer's securities in another foreign jurisdiction, constitutes the primary trading market for the issuer's subject class of securities.<sup>110</sup> The new rule defines "primary trading market" to mean that at least 55 percent of the trading in the foreign private issuer's subject class of securities took place in, on or through the facilities of a securities market or markets in no more than two foreign jurisdictions during a recent 12-month period.<sup>111</sup>

<sup>107</sup> 17 CFR 239.16b. Form S-8 is the form used by an Exchange Act reporting company to register securities for issuance to its employees or those of its subsidiaries or parent under an employee benefit plan.

<sup>108</sup> New Exchange Act Rule 12h-6(f)(2) (17 CFR 240.12h-6(f)(2)).

<sup>109</sup> See General Instruction A.1 to Form S-8.

<sup>110</sup> New Exchange Act Rule 12h-6(a)(3) (17 CFR 240.12h-6(a)(3)).

<sup>111</sup> New Exchange Act Rule 12h-6(f)(5)(i) (17 CFR 240.12h-6(f)(5)(i)). Rule 12h-6 defines "recent 12-month period" to mean a 12-calendar month period that ended no more than 60 days before the filing date of the Form 15F. New Exchange Act Rule 12h-6(f)(6) (17 CFR 240.12h-6(f)(6)).

That definition further provides that if an issuer aggregates the trading of its securities in two foreign jurisdictions for the purpose of Rule 12h-6's foreign listing condition, the trading for the issuer's securities in at least one of the two foreign jurisdictions must be larger than the trading in the United States for the same class of the issuer's securities.<sup>112</sup>

The purpose of this foreign listing condition is to help assure that there is a non-U.S. jurisdiction that principally regulates and oversees the issuance and trading of the issuer's securities and the issuer's disclosure obligations to investors. This foreign listing condition increases the likelihood that the principal pricing determinants for a foreign private issuer's securities are located outside the United States, and makes more likely the availability of a set of non-U.S. securities disclosure documents to which a U.S. investor may turn for material information when making investment decisions about the issuer's securities following the termination of its disclosure obligations under Rule 12h-6. If the United States was the sole or principal market for the foreign private issuer's securities, then the Commission would have a greater regulatory interest in continuing to subject the foreign company to the Exchange Act reporting regime.

The adopted foreign listing condition is substantially the same as the repropounded condition, except that, at the request of commenters, we have modified the rule to reflect that an issuer may be listed on multiple exchanges within a single jurisdiction.<sup>113</sup> Thus, the new rule provides that an issuer may aggregate trading in the same class of its equity securities on all of its exchanges within a single foreign jurisdiction or in no more than two foreign jurisdictions for the purpose of the foreign listing condition, as long as the trading in one of the foreign jurisdictions is greater than the trading in the United States.<sup>114</sup>

<sup>112</sup> New Exchange Act Rule 12h-6(f)(5)(ii) (17 CFR 240.12h-6(f)(5)(ii)). As proposed and as adopted, measurement under this condition is by reference to average daily trading volume (ADTV) as reported by the relevant market. Although the proposing and repropounding releases noted that there are differences concerning how various markets measure and report trading volume (for example, dealer markets versus auction markets), no commenter supported a trading volume standard that would take such differences into account.

<sup>113</sup> See, for example, the letter from Cravath.

<sup>114</sup> For the purpose of the primary trading market determination, an issuer would measure the ADTV of on-exchange transactions in its securities aggregated over one or two foreign jurisdictions against its worldwide trading volume. The issuer could include in this measure off-exchange

<sup>99</sup> 15 U.S.C. 77d(2).

<sup>100</sup> 17 CFR 230.501 *et seq.*

<sup>101</sup> 17 CFR 230.144A.

<sup>102</sup> 17 CFR 230.801 and 230.802.

<sup>103</sup> 15 U.S.C. 77c and 77c(a)(10).

<sup>104</sup> See Part II.A.3 of the Repropounding Release.

<sup>105</sup> Instruction 2 to Item 8 of Form 20-F imposes a similar limitation.

<sup>106</sup> See the letters from Linklaters and the N.Y. State Bar.

We received relatively few comments on the repropose foreign listing condition.<sup>115</sup> Three commenters generally approved of the changes made to the originally proposed foreign listing condition.<sup>116</sup> These changes included shortening the proposed foreign listing requirement from two years to one year and permitting an issuer to aggregate its trading on an exchange in one foreign jurisdiction with that in a second foreign jurisdiction.<sup>117</sup> These commenters agreed that the repropose foreign listing condition would increase the flexibility of the new rule for foreign private issuers while serving to protect investors.

New Rule 12h-6's foreign listing condition will apply to any issuer of equity securities, whether that issuer is relying on the trading volume benchmark or the alternative holder provision, as repropose. Some commenters requested that the Commission not apply the foreign listing condition to an issuer that has delisted in its primary trading market as a result of being acquired. According to these commenters, that issuer would not be able to terminate its Exchange Act reporting obligations under the 300-holder provision because it could not meet the foreign listing requirement.<sup>118</sup>

The foreign listing condition is an important component of the new exit regime because it increases the likelihood that U.S. investors will have a set of material disclosure documents about an issuer to which they may turn following that issuer's exit from the Exchange Act reporting system. Therefore, we decline to create an exception from this condition for any issuer at this time.<sup>119</sup> We note that, under most circumstances, a foreign private issuer that has been acquired may exit the Exchange Act reporting regime under the provisions of the current exit rules that permit any issuer,

transactions in those jurisdictions comprising the numerator only if it includes those off-exchange transactions when calculating worldwide trading volume in the denominator. This denominator would be the same as the denominator used for the trading volume benchmark. Thus, this denominator would consist of U.S. ADTV, which must include both on-exchange and off-exchange transactions, and non-U.S. ADTV, which must include on-exchange transactions, but could also include off-exchange transactions. See Part II.A.1.a.ii of this release.

<sup>115</sup> See the letters from the ABA, BusinessEurope, Cravath, Davis Polk, Linklaters, and Skadden Arps.

<sup>116</sup> See the letters from the ABA, Linklaters, and Skadden Arps.

<sup>117</sup> See Part II.A.4 of the Reproposing Release.

<sup>118</sup> See the letters from BusinessEurope and Davis Polk.

<sup>119</sup> For this reason, we decline to adopt a general exception from the foreign listing condition for equity securities issuers proceeding under the alternative 300-holder provision.

whether domestic or foreign, or listed or unlisted, to file a Form 15 if its securities are held by less than 300 holders of record.<sup>120</sup>

#### B. Debt Securities Provision

As adopted, Rule 12h-6 will enable a foreign private issuer to terminate its Exchange Act reporting obligations regarding a class of debt securities as long as the issuer has filed or furnished all reports required under Exchange Act section 13(a) or section 15(d), including at least one Exchange Act annual report, and has its class of debt securities held of record by less than 300 holders either on a worldwide basis or who are U.S. residents.<sup>121</sup> This provision reflects the minimum reporting requirement and current 300 holder standard under section 15(d) and Rule 12h-3. Moreover, it is the same as the repropose debt securities provision.<sup>122</sup>

Some commenters requested that we revise the 300-holder standard for termination of a foreign private issuer's Exchange Act reporting obligations under Exchange Act Section 15(d) regarding a class of debt securities that had been offered and sold pursuant to an effective registration statement under the Securities Act.<sup>123</sup> In the view of most of these commenters, an increase to at least 1,000 holders would be appropriate in light of the changes in the global securities markets since the 300-holder standard was adopted by Congress in the 1960s.<sup>124</sup>

We are not revising the 300-holder standard as it applies to debt securities. While we agree that there have been substantial changes in the global capital markets, no commenter has presented us with data or other information that supports raising the threshold from that adopted by Congress. In addition, the problems associated with determining the ownership of equity securities do not appear to apply to debt securities, as to which there is generally a single U.S.-

<sup>120</sup> Exchange Act Rules 12g-4(a)(1)(i) and 12h-3(b)(1)(i) (17 CFR 240.12g-4(a)(1)(i) and 240.12h-3(b)(1)(i)).

<sup>121</sup> New Exchange Act Rule 12h-6(c) (17 CFR 240.12h-6(c)).

<sup>122</sup> As originally proposed and repropose, the adopted exit rule for debt securities does not include a provision comparable to Rule 12h-3's 500 record holder provision because most foreign private issuers that are debt securities registrants would likely exceed the \$10 million asset threshold that accompanies the 500 record holder standard. No commenter has ever requested that we incorporate the 500 record holder and \$10 million asset standard into Rule 12h-6's debt securities provision, either at the proposing or repropose stage.

<sup>123</sup> See the letters from Cleary Gottlieb, EALIC, Davis Polk, and the EU.

<sup>124</sup> Davis Polk favored an increase to at least 3,000.

based transfer agent. Further, the same 300-holder threshold applies to U.S. companies, and unlike the situation for equity securities, no commenter has addressed why it would be appropriate to treat U.S. and foreign registrants differently with respect to the termination or suspension of reporting obligations under section 15(d) as applied to debt securities.<sup>125</sup>

#### C. Revised Counting Method

We are adopting, as repropose, Rule 12h-6's revised counting method, which will enable an issuer of equity securities proceeding under the alternative 300-holder provision, or a debt securities issuer, to use a modified version of the "look through" counting method under Rule 12g3-2(a) when determining the number of its U.S. resident security holders.<sup>126</sup> Instead of having to look through the accounts of brokers, banks and other nominees on a worldwide basis to determine the number of its U.S. resident holders, as is required under the current rules, a foreign private issuer could limit its inquiry to brokers, banks and other nominees located in the United States, the issuer's jurisdiction of incorporation, legal organization or establishment and, if different, the jurisdiction of its primary trading market.<sup>127</sup> This revised counting method is substantially similar to the counting method that the Commission adopted under the exemptive rules for cross-border rights offerings, exchange offers and business combinations,<sup>128</sup> as well as under the definition of foreign private issuer.<sup>129</sup>

Like the repropose rule, the adopted counting method provision requires an issuer that aggregates the trading volume of its securities in two foreign jurisdictions for the purpose of meeting Rule 12h-6's foreign listing condition to look through nominee accounts in both foreign jurisdictions, which comprise its primary trading market, and in the United States as well as in its jurisdiction of incorporation or organization, if different from the two jurisdictions that comprise its primary

<sup>125</sup> We note that foreign private issuers that avail themselves of Rule 12h-6 will be able to terminate their reporting obligations under section 15(d) while U.S. companies will only continue to be able to suspend their reporting obligations pursuant to Rule 12h-3 and section 15(d).

<sup>126</sup> New Exchange Act Rule 12h-6(e) (17 CFR 240.12h-6(e)).

<sup>127</sup> New Exchange Act Rule 12h-6(e)(1) (17 CFR 240.12h-6(e)(1)).

<sup>128</sup> Securities Act Rules 800 *et seq.* (17 CFR 230.800 *et seq.*).

<sup>129</sup> 17 CFR 230.405 and 240.3b-4(c).

trading market.<sup>130</sup> Also as repropoed, the adopted counting method provision permits an issuer to rely on the assistance of an independent information services provider when calculating the number of its U.S. security holders.<sup>131</sup>

We are also adopting a presumption, included in both the originally proposed and repropoed counting method provisions, that we previously adopted under the cross-border rules and definition of foreign private issuer.<sup>132</sup> This presumption is that, if, after reasonable inquiry, an issuer is unable without unreasonable effort to obtain information about the amount of securities held by nominees for the accounts of customers resident in the United States, it may assume that the customers are the residents of the jurisdiction in which the nominee has its principal place of business.<sup>133</sup>

The repropoed rule provided that an issuer must count securities as owned by U.S. holders when publicly filed reports of beneficial ownership or information that is otherwise provided to it indicates that the securities are held by U.S. residents. One commenter requested that we clarify that an issuer is not required to take account of U.S. ownership information provided to it if the issuer determines that it is unreliable.<sup>134</sup> We have so clarified by revising the above provision to state that an issuer must count securities as owned by U.S. holders when publicly filed reports of beneficial ownership or other reliable information that is provided to it indicates that the securities are held by U.S. residents.<sup>135</sup>

Some foreign jurisdictions have laws that provide an established and enforceable means for a public company to obtain information about its shareholders.<sup>136</sup> Like the repropoed rule, Rule 12h-6 does not provide that a foreign private issuer may rely solely on specified foreign statutory or code provisions when calculating the number of its U.S. resident equity or debt holders. We received only two comments in support of such a provision at the proposing stage, and none at the repropoing stage. However,

as we noted in the repropoing release, as part of its inquiry regarding whether it meets any of the quantitative benchmarks under Rule 12h-6, an issuer may refer to shareholder information obtained pursuant to those foreign statutory or code provisions to the extent that this shareholder information is reasonably reliable and accurate and furthers the purpose of the inquiry.

#### *D. Expanded Scope of Rule 12h-6*

We are adopting, substantially as repropoed, an expansion of the scope of the originally proposed Rule 12h-6 in two respects. First, we are adopting a rule providing that an issuer that has succeeded to the Exchange Act reporting obligations of an acquired company may terminate those reporting obligations under Rule 12h-6 as long as it satisfies specified conditions. Second, we are extending the application of Rule 12h-6 to a foreign private issuer that previously filed a Form 15 and effected its termination of registration or suspension of reporting under the current exit rules before the effective date of Rule 12h-6, subject to conditions.

##### 1. Application of Rule 12h-6 to Successor Issuers

As adopted, Exchange Act Rule 12h-6(d)<sup>137</sup> provides that, following a merger, consolidation, exchange of securities, acquisition of assets or otherwise, a foreign private issuer that has succeeded to the registration of a class of securities under Exchange Act section 12(g) pursuant to Rule 12g-3,<sup>138</sup> or to the reporting obligations of another issuer under Exchange Act section 15(d) pursuant to Rule 15d-5,<sup>139</sup> may file a Form 15F to terminate those reporting obligations if, regarding a class of equity securities, the successor issuer meets the conditions under Rule 12h-6(a), which applies to equity securities issuers.<sup>140</sup> Regarding a class of debt securities, the successor issuer must meet the conditions under Rule 12h-6(c), including the reporting condition.<sup>141</sup> New Rule 12h-6(d) then provides that, when determining whether it meets the prior reporting condition under either the equity or debt securities provision of the final rule, a successor issuer may take into account the reporting history of the issuer whose reporting obligations it has

assumed pursuant to Rule 12g-3 or 15d-5.<sup>142</sup>

This successor issuer provision will enable a non-Exchange Act reporting foreign private issuer that acquires a reporting foreign private issuer in a transaction exempt under the Securities Act, for example, under Rule 802 or section 3(a)(10), to qualify immediately for termination of its Exchange Act reporting obligations under Rule 12h-6, without having to file an Exchange Act annual report, as long as the successor issuer meets the rule's foreign listing, dormancy and quantitative benchmark conditions, and the acquired company's reporting history fulfills Rule 12h-6's prior reporting condition. Since the successor issuer will have assumed the acquired company's Exchange Act reporting obligations, we believe it is appropriate that the issuer succeed to the acquired company's reporting history for the purpose of Rule 12h-6.

The adopted successor issuer provision is substantially similar to the repropoed provision, except that the adopted rule clarifies that, in order to qualify for deregistration under the successor issuer provision, an issuer must meet all of the conditions pertaining to equity securities registrants, including the dormancy condition. We have made this clarification in order to underscore our position, stated at the repropoing stage, that if a previously non-Exchange Act reporting foreign private issuer acquires an Exchange Act reporting company by consummating an exchange offer, merger or other business combination registered under the Securities Act, most likely on a Form F-4 registration statement, the acquiror will have to fulfill Rule 12h-6's prior reporting condition without reference to the acquired company's reporting history. Since the acquiror will have triggered its own section 15(d) reporting obligations upon the effectiveness of its Securities Act registration statement, it will have to meet Rule 12h-6's full reporting condition like any other section 15(d) reporting company before it can terminate its reporting obligations under the new rule. In order to clarify that such a Securities Act registrant may not proceed under the successor issuer provision and immediately terminate its section 15(d) reporting obligations upon completion of the Form F-4 transaction, the adopted rule provides that an issuer must meet Rule 12h-6's equity

<sup>130</sup> New Exchange Act Rule 12h-6(e)(1)(ii) (17 CFR 240.12h-6(e)(1)(ii)).

<sup>131</sup> New Exchange Act Rule 12h-6(e)(4) (17 CFR 240.12h-6(e)(4)).

<sup>132</sup> See Securities Act Rule 800(h)(4) (17 CFR 230.800(h)(4)) and Instruction B to Exchange Act Rule 3b-4(c)(1) (17 CFR 240.3b-4(c)(1)).

<sup>133</sup> New Exchange Act Rule 12h-6(e)(2) (17 CFR 240.12h-6(e)(2)).

<sup>134</sup> See the letter from Cravath.

<sup>135</sup> New Rule 12h-6(e)(3) (17 CFR 240.12h-6(e)(3)).

<sup>136</sup> See, for example, section 212 of the United Kingdom Companies Act.

<sup>137</sup> 17 CFR 240.12h-6(d).

<sup>138</sup> 17 CFR 240.12g-3.

<sup>139</sup> 17 CFR 240.15d-5.

<sup>140</sup> New Exchange Act Rule 12h-6(d)(1)(i) (17 CFR 240.12h-6(d)(1)(i)).

<sup>141</sup> New Exchange Act Rule 12h-6(d)(1)(ii) (17 CFR 240.12h-6(d)(1)(ii)).

<sup>142</sup> New Exchange Act Rule 12h-6(d)(2) (17 CFR 240.12h-6(d)(2)).

securities conditions, which includes the dormancy condition.<sup>143</sup>

Most of the parties that commented on the repropoed successor issuer provision supported it.<sup>144</sup> However, one commenter sought clarification regarding the intended role that the predecessor company would play in satisfying Rule 12h-6's requirements.<sup>145</sup> More particularly, this commenter was concerned that Rule 12h-6 could be construed to require an issuer to take into account the listing and trading history of an acquired company. Such an interpretation could preclude an acquiror from terminating its Exchange Act reporting obligations immediately after succession if the acquired company was unlisted or had an active U.S. trading market.

Therefore, we are clarifying that Rule 12h-6(d) permits a successor issuer to consider an acquired company's history only when determining whether the successor meets Rule 12h-6's prior reporting condition. Following an acquisition, a successor issuer must look only to its own foreign listing history, and consider its own U.S. and worldwide trading volume, when determining whether it satisfies Rule 12h-6's foreign listing and trading volume conditions.

This commenter also sought clarification regarding whether, as a condition to deregistration under Rule 12h-6, a successor issuer would have an obligation under Exchange Act Rule 12g-3(g)<sup>146</sup> to file an Exchange Act annual report for the predecessor's last full fiscal year prior to succession. As with the filing of a Form 15 under the current exit rules, under Rule 12h-6(g),<sup>147</sup> the suspension of a foreign private issuer's duty to file reports under section 13(a) or 15(d) occurs immediately upon filing a Form 15F. This suspension extends to an annual report that would be required under Rule 12g-3(g). A successor issuer would only have to file an annual report on behalf of its predecessor under Rule 12g-3(g) if, at the time of filing its Form 15F, that annual report was past due.

<sup>143</sup> Because some commenters stated that the dormancy condition should not apply to a foreign private issuer that filed a Securities Act registration statement solely to effect an acquisition or business combination (see, for example, the letter from Sullivan & Cromwell), we believe it is necessary to state explicitly in Rule 12h-6 that the dormancy condition applies to a successor issuer.

<sup>144</sup> See, for example, the letters from Cleary Gottlieb and PricewaterhouseCoopers.

<sup>145</sup> See the letter from Latham & Watkins.

<sup>146</sup> 17 CFR 240.12g-3(g). This provision requires a successor issuer to file an Exchange Act annual report for the last full fiscal year of the predecessor before the issuer's succession if the predecessor has not done so.

<sup>147</sup> 17 CFR 240.12h-6(g).

This is consistent with the current practice involving Form 15.

## 2. Application of Rule 12h-6 to Prior Form 15 Filers

As adopted, Rule 12h-6(i) will extend termination of Exchange Act reporting under the new exit rule to a foreign private issuer that, before the effective date of Rule 12h-6, already effected the suspension or termination of its Exchange Act reporting obligations after filing a Form 15.<sup>148</sup> A prior Form 15 filer will have to meet the following conditions in order to obtain the benefits of Rule 12h-6 with respect to a class of equity securities:

- the issuer must satisfy Rule 12h-6's foreign listing condition regarding the class of equity securities that was the subject of its Form 15;

- the issuer must satisfy either Rule 12h-6's trading volume or alternative holder provision; and

- the issuer must file a Form 15F.<sup>149</sup> An equity securities issuer will not have to satisfy Rule 12h-6's prior reporting or dormancy provisions since it will already be a non-reporting entity.

A prior Form 15 filer will have to meet the following conditions in order to obtain the benefits of Rule 12h-6 with respect to a class of debt securities:

- the issuer must meet Rule 12h-6's record holder provision for debt securities; and

- the issuer must file a Form 15F.<sup>150</sup>

As repropoed, the prior Form 15 filer provision was substantially similar to the adopted rule, except that we proposed to establish, as a condition of eligibility, that an issuer not be required to register a class of securities under section 12(g) or be required to file reports under section 15(d).<sup>151</sup> While the parties that commented on the repropoed provision supported extending the benefits of Rule 12h-6 to a prior Form 15 filer, most also opposed requiring that filer to determine that it had not assumed or resumed Exchange Act reporting obligations.<sup>152</sup> Those commenters noted that, since under the repropoed rule, a former equity

securities registrant could not have relied on the trading volume condition, that registrant would have had once more to undertake the costly task of counting its U.S. resident holders.

We agree that, as suggested by some of those commenters, a more equitable approach would be to place former equity securities registrants in as good a position as current registrants by permitting them to meet the trading volume benchmark as an alternative to the record holder standard.<sup>153</sup> The adopted rule takes this approach.

## E. Public Notice Requirement

We are adopting, as repropoed, a public notice requirement as a condition to termination of reporting under Rule 12h-6, except for prior Form 15 filers.<sup>154</sup> Pursuant to this requirement, an issuer of equity or debt securities, including a successor issuer, will have to publish, either before or on the date that it files its Form 15F, a notice in the United States that discloses its intent to terminate its section 13(a) or 15(d) reporting obligations. The issuer must publish the notice, such as a press release, through a means reasonably designed to provide broad dissemination of the information to the public in the United States. The issuer also must submit a copy of the notice, either under cover of a Form 6-K before or at the time of filing of the Form 15F, or as an exhibit to the Form 15F. The primary purpose of this notice provision is to alert U.S. investors who have purchased the issuer's securities about the issuer's intended exit from the Exchange Act registration and reporting system.

The notice requirement will not apply to a prior Form 15 filer that files a Form 15F to terminate its registration and reporting obligations under Rule 12h-6(i). Since a prior Form 15 filer will already have ceased its Exchange Act reporting obligations, investors would gain little from the publishing of such a notice.

One commenter requested that we clarify that an issuer may satisfy this notice provision by having the press release disseminated in the United States by one of the international wire services, such as those operated by U.S. and international financial publications.<sup>155</sup> We have so clarified by revising Form 15F to request that the issuer identify the means, such as publication in a particular newspaper or transmission by a particular wire

<sup>148</sup> New Exchange Act Rule 12h-6(i)(1) (17 CFR 240.12h-6(i)(1)). A former section 15(d) reporting company would benefit from proceeding under Rule 12h-6 by obtaining termination, rather than mere suspension, of its reporting obligations with respect to a class of equity or debt securities. As discussed below, a former section 12(g) company also would benefit from proceeding under Rule 12h-6 by being able to claim the Rule 12g3-2(b) exemption immediately upon the effectiveness of its Rule 12h-6 termination.

<sup>149</sup> Rule 12h-6(i)(2)(i) (17 CFR 240.12h-6(i)(2)(i)).

<sup>150</sup> Rule 12h-6(i)(2)(ii) (17 CFR 240.12h-6(i)(2)(ii)).

<sup>151</sup> See Part II.D.2 of the Reproposing Release.

<sup>152</sup> See the letters from the ABA, BusinessEurope, Cleary Gottlieb, EALIC, the EU, the N.Y. State Bar, and Sullivan & Cromwell.

<sup>153</sup> See, for example, the letters from EALIC and Sullivan & Cromwell.

<sup>154</sup> New Exchange Act Rule 12h-6(h) (17 CFR 240.12h-6(h)).

<sup>155</sup> See the letter from Skadden Arps.

service, used to disseminate the notice in the United States.<sup>156</sup>

#### F. Form 15F

Like our current exit rules, adopted Rule 12h-6 will require a foreign private issuer to file electronically on EDGAR a form certifying that it meets the requirements for ceasing its Exchange Act reporting obligations.<sup>157</sup> By signing and filing new Form 15F,<sup>158</sup> a foreign private issuer will be certifying that:

- it meets all of the conditions for termination of Exchange Act reporting specified in Rule 12h-6; and
- there are no classes of securities other than those that are the subject of the Form 15F regarding which the issuer has Exchange Act reporting obligations.<sup>159</sup>

Unlike current Form 15, new Form 15F will require a foreign private issuer to provide disclosure regarding several items in order to provide investors with information regarding an issuer's decision to terminate its Exchange Act reporting obligations. The information will also assist Commission staff in assessing the use of Rule 12h-6. The Form 15F filing requirement and the specified items of information are substantially the same as those under repropose Rule 12h-6, except that we have modified some items to conform to the changes we have made to the repropose rule.

As with Form 15, and as originally proposed and repropose, filing of new Form 15F will immediately suspend an issuer's Exchange Act reporting obligations regarding the subject class of securities and commence a 90-day waiting period. If, at the end of this 90-day period, the Commission has not objected to the filing, the suspension will automatically become a termination of registration and reporting. If the Commission denies the Form 15F or the issuer withdraws it, within 60 days of the date of the denial or withdrawal, the issuer will be required to file or submit all reports that would have been required had it not filed the Form 15F.<sup>160</sup>

After filing Form 15F, an issuer will have no continuing obligation to make inquiries or perform other work concerning the information contained in the Form 15F, including its assessment of trading volume or ownership of its securities. However, Form 15F will require an issuer to undertake to

withdraw its Form 15F before the date of effectiveness if it has actual knowledge of information that causes it reasonably to believe that, at the date of filing the Form 15F:

- the average daily trading volume of its subject class of securities in the United States exceeded 5 percent of the average daily trading volume of that class of securities on a worldwide basis for the same recent 12-month period that the issuer used for purposes of Rule 12h-6(a)(4)(i);
- its subject class of securities was held of record by 300 or more United States residents or 300 or more persons worldwide, if proceeding under Rule 12h-6(a)(4)(ii) or Rule 12h-6(c); or
- it otherwise did not qualify for termination of its Exchange Act reporting obligations under Rule 12h-6.<sup>161</sup>

This undertaking is substantially the same as that required under the repropose rule and form, except that, in the first prong of the repropose rule's undertaking, we referred to trading volume "during a recent 12-month period." At the request of a commenter,<sup>162</sup> we have clarified that the undertaking applies to an issuer relying on the trading volume provision only when it learns that its trading volume exceeded the 5 percent threshold for the same recent 12-month period that the issuer used for purposes of Rule 12h-6's trading volume provision.

#### G. Amended Rules 12g-4 and 12h-3

Although similar to the current 300 record holder standard, Rule 12h-6's alternative record holder condition for equity securities and its debt securities provision will offer advantages compared to the current exit rules. As adopted, Rule 12h-6's revised counting method will limit the jurisdictions in which a foreign private issuer must search for records of its U.S. resident holders. Moreover, Rule 12h-6 will enable a foreign private issuer to terminate, rather than merely suspend, its section 15(d) reporting obligations regarding a class of equity or debt securities. In addition, under Rule 12h-6, a foreign private issuer will be able to claim the benefits of the Rule 12g3-2(b) exemption immediately upon the effectiveness of its termination of reporting regarding a class of equity securities under section 12(g) or 15(d). In each instance, once its termination of reporting becomes effective under Rule 12h-6, an issuer will no longer have to concern itself with whether the number of its U.S. resident or worldwide

holders of the class of subject securities has risen above the statutory or regulatory threshold.

Given these advantages, we continue to believe that, following the adoption of Rule 12h-6, few, if any, foreign private issuers will elect to proceed under the provisions of Rule 12g-4 or Rule 12h-3 that allow a foreign private issuer to terminate its registration of a class of securities under section 12(g) or suspend the duty to file reports under section 15(d) if the class of securities is held by less than 300 U.S. residents or by 500 U.S. residents and the issuer has had total assets not exceeding \$10 million on the last day of each of its most recent three fiscal years.<sup>163</sup> Accordingly, we are adopting the amendments to eliminate these provisions in Rules 12g-4 and 12h-3, as repropose.

#### H. Amendment Regarding the Rule 12g3-2(b) Exemption

We are adopting, substantially as repropose, an amendment to Exchange Act Rule 12g3-2<sup>164</sup> that will apply the exemption under Exchange Act Rule 12g3-2(b) immediately to an issuer of equity securities upon the effectiveness of its termination of reporting under Rule 12h-6.<sup>165</sup> As a condition to the immediate application of the Rule 12g3-2(b) exemption upon its termination of reporting under Rule 12h-6, an issuer must publish subsequently in English material home country documents required under Rule 12g3-2(b)(1)(iii) on its Web site or through an electronic information delivery system generally available to the public in its primary trading market.<sup>166</sup>

The purpose of this condition is to provide U.S. investors with access to material information about an issuer of equity securities following its termination of reporting pursuant to Rule 12h-6.<sup>167</sup> In addition, an issuer

<sup>163</sup> See Exchange Act Rules 12g-4(a)(2) and 12h-3(b)(2) (17 CFR 240.12g-4(a)(2) and 12h-3(b)(2)).

<sup>164</sup> New Exchange Act Rule 12g3-2(e)(1) (17 CFR 240.12g3-2(e)(1)).

<sup>165</sup> Currently, foreign private issuers that registered a class of securities under section 12 must wait at least 18 months following their termination of reporting before they would be eligible to apply for the Rule 12g3-2(b) exemption. In addition, foreign private issuers with an active or suspended reporting obligation under section 15(d) have thus far not been eligible to claim the Rule 12g3-2(b) exemption. See Rule 12g3-2(d)(1) (17 CFR 240.12g3-2(d)(1)), which currently excepts from the 18 month requirement only issuers that have filed Securities Act registration statements using the Multijurisdictional Disclosure Act (MJDS) forms.

<sup>166</sup> New Exchange Act Rule 12g3-2(e)(2) (17 CFR 240.12g3-2(e)(2)).

<sup>167</sup> Any post-termination trading of a foreign private issuer's securities in the United States

<sup>156</sup> See Item 7.B of Form 15F.

<sup>157</sup> New Exchange Act Rule 12h-6(a).

<sup>158</sup> 17 CFR 249.324.

<sup>159</sup> Form 15F General Instruction B.

<sup>160</sup> New Exchange Act Rule 12h-6(g) (17 CFR 240.12h-6(g)).

<sup>161</sup> Form 15F Item 11.

<sup>162</sup> See the letter from Cleary Gottlieb.

will be able to maintain a sponsored ADR facility with respect to its securities.<sup>168</sup> This condition also will facilitate resales of that issuer's securities to qualified institutional buyers under Rule 144A.<sup>169</sup> Moreover, having a foreign private issuer's key home country documents posted in English on its web site will assist U.S. investors who are interested in trading the issuer's securities in its primary securities market.<sup>170</sup>

The adopted extension of Rule 12g3-2(b) will apply both to a class of equity securities formerly registered under section 12(g) and one that formerly gave rise to section 15(d) reporting obligations, as repropoed. The Rule 12g3-2(b) exemption received under new Rule 12g3-2(e) will remain in effect for as long as the foreign private issuer satisfies the rule's electronic publication conditions or until the issuer registers a new class of securities under section 12 or incurs section 15(d) reporting obligations by filing a new Securities Act registration statement, which has become effective.<sup>171</sup>

#### 1. Extension of the Rule 12g3-2(b) Exemption Under Rule 12g3-2(e)

As adopted, because Rule 12g3-2(e) applies to any issuer that has terminated its reporting under Rule 12h-6, the rule amendment will effectively extend the Rule 12g3-2(b) exemption to:

- a foreign private issuer immediately upon its termination of reporting regarding a class of equity securities pursuant to Rule 12h-6(a);
- a successor issuer immediately upon its termination of reporting regarding a class of equity securities pursuant to Rule 12h-6(d); and

would have to occur through over-the-counter markets such as that maintained by the Pink Sheets, LLC since, as of April, 1998, the NASD and the Commission have required a foreign private issuer to register a class of securities under Exchange Act section 12 before its securities could be traded through the electronic over-the-counter bulletin board administered by Nasdaq. See, for example, NASD Notice to Members (January 1998).

<sup>168</sup> In order to establish an ADR facility, an issuer must register the ADRs on Form F-6 (17 CFR 239.36) under the Securities Act. The eligibility criteria for the use of Form F-6 include the requirement that the issuer have a reporting obligation under Exchange Act section 13(a) or have established the exemption under Rule 12g3-2(b). See General Instruction I.A.3 of Form F-6.

<sup>169</sup> See Securities Act Rule 144A(d)(4) (17 CFR 230.144A(d)(4)).

<sup>170</sup> Brokers currently are exempt from complying with certain information obligations under Exchange Act Rule 15c2-11 (17 CFR 240.15c2-11) when a foreign company has established and maintains the Rule 12g3-2(b) exemption. See Release No. 34-41110 (February 25, 1999), 64 FR 11124 (March 8, 1999).

<sup>171</sup> See New Exchange Act Rule 12g3-2(e)(3) (17 CFR 240.12g3-2(e)(3)).

- a prior Form 15 filer immediately upon its termination of reporting regarding a class of equity securities pursuant to Rule 12h-6(i).<sup>172</sup>

Currently Rule 12g3-2(d)(2) precludes extending the Rule 12g3-2(b) exemption to a foreign private issuer, other than a Canadian issuer using the MJDS forms, that has issued securities in a merger or other similar transaction to acquire a company that has registered a class of securities under section 12 or has a reporting obligation under section 15(d).<sup>173</sup> As amended, and as repropoed, Rule 12g3-2(d)(2) will effectively extend the Rule 12g3-2(b) exemption to a successor issuer that has terminated its Exchange Act reporting obligations under Rule 12h-6(d). Since we are permitting a successor issuer to rely on its predecessor's reporting history for the purpose of Rule 12h-6, we believe the issuer should also benefit from claiming the Rule 12g3-2(b) exemption immediately upon the effectiveness of its Form 15F.

Also as repropoed, we are extending the Rule 12g3-2(b) amendment immediately upon the termination of reporting pursuant to Rule 12h-6(i) to a foreign private issuer that, before the effective date of Rule 12h-6, terminated its registration or suspended its reporting obligations regarding a class of equity securities after filing a Form 15. This is consistent with our expansion of the scope of Rule 12h-6 to encompass prior Form 15 filers. Without this change, a prior Form 15 filer would find itself subject to the 18 month waiting period that currently exists under Rule 12g3-2(d), although the issuer qualified for termination of reporting under Rule 12h-6(i).

We further are permitting a foreign private issuer that filed a Form 15F solely to terminate its reporting obligations regarding a class of debt securities to establish the Rule 12g3-2(b) exemption for a class of equity securities upon the effectiveness of its termination of reporting regarding the class of debt securities.<sup>174</sup> Since we are abolishing the 18 month "waiting period" for equity securities issuers that have terminated their Exchange Act reporting obligations pursuant to Rule 12h-6, it would serve no useful purpose to impose this waiting period on a debt securities issuer that determines that it will need the Rule 12g3-2(b) exemption for a class of equity securities following

<sup>172</sup> Most parties that commented on repropoed Rule 12g3-2(e) favored the extension of the Rule 12g3-2(b) exemption to the above categories of issuers. See, for example, the letter from the ABA.

<sup>173</sup> 17 CFR 240.12g3-2(d)(2).

<sup>174</sup> New Exchange Act Rule 12g3-2(e)(4) (17 CFR 240.12g3-2(e)(4)).

its termination of reporting under Rule 12h-6.

The repropoed version of Rule 12g3-2(e)(4) provided that a debt securities issuer could apply for the Rule 12g3-2(b) exemption at any time following the effectiveness of its termination of reporting regarding the class of debt securities. One commenter pointed out that this version, if adopted, would jeopardize the legality of a sponsored ADR facility maintained by a registered debt securities issuer regarding a class of equity securities.<sup>175</sup> A foreign private issuer that has registered only debt securities under the Securities Act may establish an ADR facility for its equity securities by filing and having become effective a Form F-6 registration statement because it is an Exchange Act reporting company.<sup>176</sup> Such an issuer would lose the legal basis for its ADR facility if, before it could apply for the Rule 12g3-2(b) exemption, it had to wait until after the completion of the 90-day waiting period, when the termination of its Exchange Act reporting obligations under Rule 12h-6 would become effective.

As we have previously stated, we value the formation of ADR facilities, because they are beneficial to U.S. investors, and we encourage foreign issuers to continue to maintain their ADR facilities after terminating their Exchange Act reporting obligations. Therefore, we are clarifying that, under adopted Rule 12g3-2(e)(4), while a debt securities issuer may establish the Rule 12g3-2(b) exemption only upon the effectiveness of its termination of reporting regarding its class of debt securities under Rule 12h-6, it may apply for the Rule 12g3-2(b) exemption after it has filed its Form 15F and commenced the 90-day waiting period.<sup>177</sup> The issuer must include in that application the date that it filed its Form 15F as well as the address of its Internet Web site or that of the electronic information delivery system on which it will publish the material home country information required under Rule 12g3-2(b).

#### 2. Electronic Publishing of Home Country Documents

Currently foreign companies claim the Rule 12g3-2(b) exemption by submitting to the Commission on an ongoing basis the material required by the rule. This material may only be submitted in paper

<sup>175</sup> See the letter from MTR Corporation.

<sup>176</sup> See General Instruction I.A.3 of Form F-6.

<sup>177</sup> Commission staff will work with issuers to coordinate the establishment of the Rule 12g3-2(b) exemption on the same day as their termination of Exchange Act reporting.

format.<sup>178</sup> Because paper submissions are more difficult to access, we are adopting Rule 12g3-2(e), which relies on electronic access to a foreign company's home country securities documents, although not through the Commission's electronic database.

As part of the condition requiring an issuer to publish its home country documents required under Rule 12g3-2(b)(1)(iii) on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, Rule 12g3-2(e) will require an issuer to publish English translations of the following documents:

- its annual report, including or accompanied by annual financial statements;
- interim reports that include financial statements;
- press releases; and
- all other communications and documents distributed directly to security holders of each class of securities to which the exemption relates.<sup>179</sup>

Rule 12g3-2(e) will further require a foreign private issuer of equity securities to disclose in the Form 15F the address of its Internet Web site or that of the electronic information delivery system in its primary trading market on which it will publish the information required under Rule 12g3-2(b)(1)(iii).<sup>180</sup> The purpose of this requirement is to alert investors and the Commission regarding where investors and others may find the company's home country documents should a problem arise concerning the Internet location of those documents.

Currently non-reporting issuers that seek the Rule 12g3-2(b) exemption must submit their letter application for the exemption and their home country documents to the Commission in paper. The same primary reason for requiring

an issuer to publish its home country documents electronically after it terminates its reporting obligations under Rule 12h-6 applies equally to current Rule 12g3-2(b) exempt companies and the non-reporting companies that eventually will apply for the exemption. In each case, the electronic posting of an issuer's home country documents will increase an investor's ability to access those documents.

Therefore, we are adopting, as proposed, an amendment to Rule 12g3-2 to permit a foreign private issuer that, upon application to the Commission and not after filing Form 15F, has obtained or will obtain the Rule 12g3-2(b) exemption to publish its home country documents that it is required to furnish on a continuous basis under Rule 12g3-2(b)(1)(iii) on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market.<sup>181</sup> As a condition to this electronic posting, an issuer that wishes to use this procedure will have to comply with the English translation requirements of repropoed Rule 12g3-2(e). It also will have to provide the Commission with the address of its Internet Web site or that of the electronic information delivery system in its primary trading market in its application for the Rule 12g3-2(b) exemption or in an amendment to that application.

Currently the Commission does not have an established means for a non-reporting company to submit electronically to the Commission its initial documents under Rule 12g3-2(b)(1)(i) and (ii).<sup>182</sup> Therefore, an applicant will have to continue to submit its letter application and the home country documents submitted in support of its initial application to the Commission in paper.<sup>183</sup>

At both the proposing and repropoing stages, some commenters suggested that the Commission impose a specific time limit, for example three years, governing how long an issuer must keep its home country documents on its Internet Web site.<sup>184</sup> We decline

to adopt a specific time limit primarily because different types of home country documents may require different periods of electronic posting. While an issuer will be required to post electronically a home country document for a reasonable period of time, what constitutes a reasonable period will depend on the nature and purpose of the home country document. At a minimum, we suggest companies provide Web site access to their home country reports for at least a 12 month period.

We also suggest that, if an issuer publishes its home country documents required under Rule 12g3-2(b) on an electronic information delivery system or an Internet Web site that is not in English, the issuer provide a prominent link on its Internet Web site directing investors to those home country documents in English.

### *I. Concerns Regarding Securities Act Rule 701*

Some commenters asked that we clarify the availability of Securities Act Rule 701<sup>185</sup> for a foreign private issuer that terminates its registration and reporting obligations under Rule 12h-6. By its terms, Rule 701 is available to any issuer that is not subject to the reporting requirements of Exchange Act section 13 or 15(d). Therefore, upon the effectiveness of termination of registration and reporting requirements under Rule 12h-6, a foreign private issuer would appear to satisfy this condition of Rule 701.

As we noted when originally proposing Rule 12h-6, before the filing of a Form 15F, a foreign private issuer would have to file a post-effective amendment to terminate the registration of its remaining unsold securities under any of its Securities Act registration statements.<sup>186</sup> This would include a Form S-8 registration statement relating to securities issuable under certain compensatory benefit plans. After the effectiveness of the Form 15F, a foreign private issuer would be able to rely on Rule 701 with respect to unsold securities that had previously been covered by the Form S-8 registration statement.

### **III. Paperwork Reduction Act Analysis**

The final rule amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995

<sup>185</sup> 17 CFR 230.701. Rule 701 provides a Securities Act exemption for the offer and sale of securities to employees and others pursuant to certain compensatory benefit plans and contracts relating to compensation.

<sup>186</sup> See the Original Proposing Release at n. 45.

<sup>178</sup> A foreign private issuer that has successfully filed an application for the Rule 12g3-2(b) exemption must currently furnish its home country documents in paper because the application is analogous to one submitted for an exemption under Exchange Act section 12(h). See Regulation S-T Rule 101(c)(16)(17 CFR 232.101(c)(16)). Although the Commission's EDGAR database contains an entry signifying the receipt of paper documents, materials received in paper are not accessible through the EDGAR system.

<sup>179</sup> Note 1 to Rule 12g3-2(e). Rule 12g3-2(b) requires an exempt issuer to submit substantially the same categories of home country documents as a reporting issuer must furnish to the Commission under cover of Form 6-K. Moreover, both Rule 12g3-2(b) and Form 6-K state that only material information need be furnished under the rule and form. See Rule 12g3-2(b)(3) (17 CFR 240.12g3-2(b)(3)) and General Instruction B to Form 6-K.

<sup>180</sup> Note 3 to Rule 12g3-2(e). An issuer will not have to update the Form 15F to reflect a change in that address.

<sup>181</sup> New Exchange Act Rule 12g3-2(f) (17 CFR 240.12g3-2(f)). Parties that commented on the repropoed extension of Rule 12g3-2(b) supported this electronic publishing provision for issuers claiming the Rule 12g3-2(b) other than through Rule 12h-6. See, for example, the letters from the ABA and Skadden Arps.

<sup>182</sup> 17 CFR 240.12g3-2(b)(1)(i) and (ii).

<sup>183</sup> As under current practice, the applicant should send these initial materials to the Commission's Office of International Corporate Finance in the Division of Corporation Finance.

<sup>184</sup> See Part II.H.2 of the Repropoing Release and, more recently, the letter from Sullivan & Cromwell.

("PRA").<sup>187</sup> The titles of the affected collection of informations are Form 20-F (OMB Control No. 3235-0288), Form 40-F (OMB Control No. 3235-0381), Form 6-K (OMB Control No. 3235-0116), new Form 15F, and submissions under Exchange Act Rule 12g3-2 (OMB Control No. 3235-0119).<sup>188</sup> An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information such as Form 20-F or new Form 15F unless it displays a currently valid OMB control number. Compliance with the disclosure requirements of new Form 15F and new Rule 12h-6, which will affect the above collections of information, is mandatory.

Form 20-F sets forth the disclosure requirements for a foreign private issuer's annual report and registration statement under the Exchange Act as well as many of the disclosure requirements for a foreign private issuer's registration statements under the Securities Act. We adopted Form 20-F pursuant to the Exchange Act and the Securities Act in order to provide investors with information about foreign private issuers that have registered securities with the Commission.

Form 40-F sets forth the disclosure requirements regarding the annual report and registration statement under the Exchange Act for a Canadian issuer that is qualified to use the Multijurisdictional Disclosure System ("MJDS"). We adopted Form 40-F pursuant to the Exchange Act in order to permit qualified Canadian issuers to prepare their Exchange Act annual reports and registration statements based primarily in accordance with Canadian requirements.

Form 6-K is used by a foreign private issuer to report material information that it:

- makes or is required to make public under the laws of the jurisdiction of its incorporation, domicile or organization (its "home country");
- files or is required to file with its home country stock exchange that is made public by that exchange; or
- distributes or is required to distribute to its security holders.

A foreign private issuer may attach annual reports to security holders, statutory reports, press releases and other documents as exhibits or attachments to the Form 6-K. We adopted Form 6-K under the Exchange Act in order to keep investors informed on an ongoing basis about foreign private issuers that have registered securities with the Commission.

New Form 15F is the form that a foreign private issuer must file when terminating its Exchange Act reporting obligations under new Exchange Act Rule 12h-6. Form 15F requires a filer to disclose information that will help investors understand the foreign private issuer's decision to terminate its Exchange Act reporting obligations and assist Commission staff in assessing whether the Form 15F filer is eligible to terminate its Exchange Act reporting obligations pursuant to Rule 12h-6.

Exchange Act Rule 12g3-2 is an exemptive rule that, under paragraph (b) of that rule, provides an exemption from Exchange Act section 12(g) registration for a foreign private issuer that, in addition to satisfying other requirements, submits copies of its material home country documents to the Commission on an ongoing basis. We adopted paragraph (b) of Rule 12g3-2 in order to provide information for U.S. investors concerning foreign private issuers with limited securities trading in U.S. capital markets.

The hours and costs associated with preparing, filing and sending Forms 20-F, 40-F, 6-K and 15F, and making submissions under Exchange Act Rule 12g3-2(b) constitute reporting and cost burdens imposed by those collections of information. We based our estimates of the effects that the final rule amendments will have on those collections of information primarily on our review of the most recently completed PRA submissions for Forms 20-F, 40-F, and 6-K, and for submissions under Rule 12g3-2(b), on the particular requirements for those forms and submissions, and on relevant information, for example, concerning comparative trading volume for numerous filers of those forms.

Final Rule 12h-6 will permit a foreign private issuer to terminate permanently its Exchange Act reporting obligations, including the obligation to file an annual report on Form 20-F or 40-F and the obligation to submit Form 6-K reports, after filing a Form 15F. Final Rule 12h-6 and the accompanying rule amendments will also enable a foreign private issuer to claim the Rule 12g3-2(b) exemption immediately upon the effectiveness of its termination of reporting pursuant to the new exit rule,

and to publish copies of its home country documents required by Rule 12g3-2(b) on its Internet Web site instead of submitting them in paper to the Commission. We have based the annual burden and cost estimates of the adopted rule amendments on Forms 20-F, 40-F, 6-K and 15F, and on the home country submissions required under Rule 12g3-2(b), on the following estimates and assumptions:

- a foreign private issuer incurs or will incur 25% of the annual burden required to produce each Form 20-F or 40-F report or Form 15F;
- outside firms, including legal counsel, accountants and other advisors, incur or will incur 75% of the burden required to produce each Form 20-F or 40-F report or Form 15F at an average cost of \$400 per hour;
- a foreign private issuer incurs or will incur 75% of the annual burden required to produce each Form 6-K report and Rule 12g3-2(b) submission, not including English translation work, and 25% of the annual burden required to perform the English translation work for Form 6-K reports and Rule 12g3-2(b) submissions; and
- outside firms, including legal counsel, accountants and other advisors, incur or will incur 25% of the burden required to produce each Form 6-K report and Rule 12g3-2(b) submission, not including English translation work, at an average cost of \$400 per hour, and 75% of the annual burden resulting from the English translation work for Form 6-K reports and Rule 12g3-2(b) submissions, at an average cost of \$125 per hour.

As was the case with the originally proposed and repropounded rule amendments, the estimated effects of the adopted rule amendments reflect the initial phase-in period of the Exchange Act termination process under new Rule 12h-6 and Form 15F during the first year of availability. We expect that most of these estimated effects will occur on a one-time, rather than a recurring, basis. While we expect that some issuers will terminate their Exchange Act reporting under Rule 12h-6 and file Form 15F in subsequent years, we do not expect the resulting burdens and costs to be of the same magnitude as the burdens and costs currently expected during the first year. Moreover, we expect that over time, the number of foreign private issuers that are encouraged to enter the Exchange Act reporting system as a result of the rule amendments will increase so that, on an annual basis, the number of foreign companies entering the Exchange Act reporting regime will exceed the number exiting that regime.

<sup>187</sup> 44 U.S.C. 3501 *et seq.*

<sup>188</sup> A limited number of foreign private issuers file annual reports on Form 10-K. In voluntarily electing to file periodic reports using domestic issuer forms, these issuers seem to have closely aligned themselves with the U.S. market. Accordingly, for the purpose of the Paperwork Reduction Act Analysis, these issuers do not appear likely to terminate their Exchange Act registration under new Rule 12h-6, and we have assumed that none of these companies will seek to use Rule 12h-6. Foreign private issuers that file periodic reports using domestic issuer forms will be eligible, nonetheless, to use Rule 12h-6.

We published a notice requesting comment on the collection of information requirements in the Original Proposing Release and submitted these requirements to the Office of Management and Budget (“OMB”) for review in accordance with the PRA.<sup>189</sup> OMB subsequently approved the proposed requirements without change. We received several comment letters regarding the proposed rule amendments, although none addressed their estimated effects on the collection of information requirements. We revised and repropounded Rule 12h-6 and the accompanying rule amendments in response to these comments. We also revised the estimated reporting and cost burdens for the repropounded rules.<sup>190</sup> Because we are adopting Rule 12h-6 and the accompanying rule amendments substantially as repropounded, the estimated reporting and cost burdens for the adopted rules remain the same as the estimated reporting and cost burdens for the repropounded rules, as discussed below.

#### A. Form 20-F

During the first year of effectiveness of repropounded Rule 12h-6, we estimate that as many as 25% of Form 20-F filers could terminate their Exchange Act reporting obligations under the new rule.<sup>191</sup> However, we continue to believe that Rule 12h-6 will encourage some foreign companies to enter the Exchange Act registration and reporting regime for the first time. Consequently, during the first effective year of Rule 12h-6, the number of Form 20-F annual reports filed could increase by 5%, leading to a net decrease of 20% for Form 20-Fs filed over this same period. This net decrease would cause:

- the number of Form 20-Fs filed to decrease to 880;<sup>192</sup>

- the total number of burden hours required to produce Form 20-F<sup>193</sup> to decrease to 2,314,400 total hours;<sup>194</sup>
- the total number of burden hours required by foreign private issuers to produce Form 20-F to decrease to 578,600 total hours;<sup>195</sup> and
- the cost incurred by outside firms<sup>196</sup> to produce Form 20-F to total \$694,320,000.<sup>197</sup>

#### B. Form 40-F

During the first year of effectiveness of Rule 12h-6, we estimate that as many as 10% of Form 40-F filers could terminate their Exchange Act reporting obligations under the new rule.<sup>198</sup> However, the repropounded rule could encourage some foreign companies to enter the Exchange Act registration and reporting regime for the first time, including some that would be eligible to use the MJDS forms, including the Form 40-F annual report. Consequently, over this same period, the number of Form 40-F annual reports filed could increase by approximately 3%, resulting in a net decrease of 7% for Form 40-Fs filed over this same period.<sup>199</sup> This net decrease would cause:

- the number of Form 40-Fs filed to total 125;<sup>200</sup>
- the number of burden hours required to produce Form 40-F<sup>201</sup> to total 53,375 total hours;<sup>202</sup>
- the number of burden hours required by foreign private issuers to produce Form 40-F to total 13,344 hours;<sup>203</sup> and
- the cost incurred by outside firms to produce Form 40-F to total \$16,012,500.<sup>204</sup>

#### C. Form 6-K

During the first year of effectiveness of Rule 12h-6, we estimate that as many as 23% of foreign private issuers that furnish Form 6-K reports could terminate their Exchange Act reporting obligations under the new rule.<sup>205</sup> However, the adopted rule could encourage some foreign companies to enter the Exchange Act registration and reporting regime for the first time, including those that will furnish Form 6-K reports. Consequently, over this same period, the number of Form 6-K reports furnished could increase by as much as 5%,<sup>206</sup> resulting in a net decrease of 18% for Form 6-Ks furnished over this same period. This net decrease would cause:

<sup>193</sup> As in the Reproposing Release, we estimate that a foreign private issuer requires on average 2,630 hours to produce each Form 20-F.

<sup>194</sup> 880 Form 20-Fs filed annually  $\times$  2,630 hours per Form 20-F = 2,314,400 hours.

<sup>195</sup> 880 Form 20-Fs  $\times$  2,630 hours per Form 20-F  $\times$  .25 = 578,600 hours. Thus, we estimate that, during the first year of effectiveness of Rule 12h-6, foreign private issuers could incur a reduction of 144,650 hours in the number of burden hours required to produce Form 20-F. 220 Form 20-Fs  $\times$  2,630 hrs.  $\times$  .25 = 144,650 hours. Using an estimated hourly rate of \$175 for in-house work, foreign private issuers could incur Form 20-F cost savings of \$25,313,750 during Rule 12h-6's first year of effectiveness. 144,650 hrs.  $\times$  \$175/hr. = \$25,313,750.

<sup>196</sup> We estimate cost savings of \$173,580,000 regarding outside firms' production of Form 20-Fs during Rule 12h-6's first year of effectiveness. 220 Form 20-Fs  $\times$  2,630 hrs.  $\times$  .75  $\times$  \$400/hr. = \$173,580,000. Thus, during the first year of its effectiveness, Rule 12h-6 could result in total estimated Form 20-F cost savings of \$198,893,750. \$25,313,750 + \$173,580,000 = \$198,893,750.

<sup>197</sup> 880 Form 20-Fs  $\times$  2,630 hours  $\times$  .75  $\times$  \$400/hour = \$694,320,000. The \$108,487,500 increase reflects the increase in the estimated outside firm hourly rate from \$300 to \$400.

<sup>198</sup> We do not expect the expanded scope of repropounded Rule 12h-6 to have as great an effect on MJDS filers as other foreign reporting companies since, typically, the U.S. trading volume relating to those shares is significant. Moreover, because of their close proximity to U.S. capital markets, we believe MJDS filers are less likely to seek to terminate their Exchange Act reporting obligations than other foreign private issuers. Accordingly, based on current experience, we expect no more than 10% of Form 40-F filers will terminate their Exchange Act reporting obligations under Rule 12h-6.

<sup>199</sup> This is the same percentage previously estimated under the originally proposed rule amendments.

<sup>200</sup> 134 Form 40-Fs filed annually (prior to this rulemaking)  $\times$  .07 = 9; 134 - 9 = 125 Form 40-Fs filed annually.

<sup>201</sup> As in the Reproposing Release, we estimate that it takes 427 hours on average to produce a Form 40-F report.

<sup>202</sup> 125 Form 40-Fs filed annually  $\times$  427 hours per Form 40-F = 53,375 hours.

<sup>203</sup> 125 Form 40-Fs filed annually  $\times$  427 hours per Form 40-F  $\times$  .25 = 13,344 hours. Thus, we estimate that, during the first year of effectiveness of Rule 12h-6, foreign private issuers could incur a reduction of 961 hours in the number of burden hours required to produce Form 40-F. 9 Form 40-Fs  $\times$  427 hrs.  $\times$  .25 = 961 hrs. This could result in estimated Form 40-F cost savings for foreign private issuers of \$168,175. 961 hrs.  $\times$  \$175/hr. = \$168,175.

<sup>204</sup> 125 Form 40-Fs filed annually  $\times$  427 hours per Form 40-F  $\times$  .75  $\times$  \$400/hour = \$16,012,500. This estimate corresponds to estimated cost savings of \$1,152,900 in connection with outside firms' production of Form 40-F during repropounded Rule 12h-6's first year of effectiveness. 9  $\times$  427 hrs.  $\times$  .75  $\times$  \$400/hr. = \$1,152,900. Thus, during the first year of its effectiveness, Rule 12h-6 could result in estimated total Form 40-F cost savings of \$168,175 + \$1,152,900 = \$1,321,075.

<sup>205</sup> This estimate is based on the estimated number of Form 20-F and Form 40-F filers that are expected to terminate their Exchange Act reporting obligations under 2h-6. 1,100 Form 20-Fs  $\times$  .25 = 275; 134 Form 40-Fs  $\times$  .10 = 13; 288 = .23  $\times$  1,234.

<sup>206</sup> This estimate is based on the estimated number of foreign private issuers that are expected to enter the Exchange Act reporting regime and file Form 20-Fs or Form 40-Fs as a result of this rulemaking during the first year of effectiveness. 1,100 Form 20-Fs  $\times$  .05 = 55; 134 Form 40-Fs  $\times$  .03 = 4; 59 = .05  $\times$  1,234.

<sup>189</sup> 44 U.S.C. 3507(d) and 5 CFR 1320.11.

<sup>190</sup> See Part III of the Reproposing Release.

<sup>191</sup> 191 As noted at the repropounding stage, a review by the Commission's Office of Economic Analysis of trading volume data on a sample of foreign Exchange Act reporting companies that filed Form 20-F during 2004 suggested that approximately 30% of filers would meet the U.S. trading volume threshold of the repropounded rule. See Part III, n. 137 of the Reproposing Release. A more recent review of the Office of Economic Analysis of trading volume data on foreign Exchange Act reporting companies with common equity trading during 2005 indicates that an estimated 29% of filers would meet the U.S. trading volume threshold of the adopted rule. That percentage may vary by region.

<sup>192</sup> 1,100 Form 20-Fs filed annually (prior to this rulemaking)  $\times$  .20 = 220; 1,100 - 220 = 880 Form 20-Fs filed annually.

- the number of Form 6-K reports furnished to decrease to 12,022;<sup>207</sup>
- the total number of burden hours required to produce the Form 6-Ks<sup>208</sup> to decrease to 104,591 total hours;<sup>209</sup>
- the total number of burden hours required by foreign private issuers<sup>210</sup> to produce Form 6-K to decrease to 65,369 hours;<sup>211</sup> and
- the cost incurred by outside firms<sup>212</sup> to produce Form 6-K to total \$10,295,775.<sup>213</sup>

#### D. Form 15F

During the first year of effectiveness of Rule 12h-6, we estimate that as many as 351 foreign private issuers<sup>214</sup> could

<sup>207</sup> 14,661 Form 6-K reports  $\times$  .18 = 2,639; 14,661 - 2,639 = 12,022 Form 6-K reports.

<sup>208</sup> In the Original and Reproposing Releases, we estimated that, prior to this rulemaking, it took a total of 127,197 annual burden hours to produce the 14,661 Form 6-Ks, or approximately 8.7 hours per Form 6-K (for work performed by foreign private issuers and outside firms). We continue to use this 8.7 hour estimate for the final rule amendments.

<sup>209</sup> 12,022 Form 6-K reports  $\times$  8.7 hours = 104,591 hours.

<sup>210</sup> We estimate that, during the first year of effectiveness of Rule 12h-6, foreign private issuers could incur a reduction of 14,349 hours in the number of burden hours required to produce Form 6-K. 2,639 Form 6-Ks  $\times$  8.7 hours = 22,959 hours; 22,959 hours  $\times$  .25 = 5,740 hours of English translation work; 5,740 hours  $\times$  .25 = 1,435 hours of English translation work for foreign private issuers; 22,959  $\times$  .75 = 17,219 hours of non-English translation work; 17,219  $\times$  .75 = 12,914 hours of non-English translation work for foreign private issuers; 1,435 + 12,914 = 14,349 hours. This could result in estimated Form 6-K cost savings of \$2,511,075 for foreign private issuers during the first year of Rule 12h-6's effectiveness. 14,349 hrs.  $\times$  \$175/hr. = \$2,511,075.

<sup>211</sup> 104,591 hours  $\times$  .25 = 26,148 hours for English translation work; 104,591 hours - 26,148 hours = 78,443 hours for non-English translation work; 78,443 hours  $\times$  .75 = 58,832 hours for non-English translation work performed by foreign private issuers; 26,148 hours  $\times$  .25 = 6,537 hours of English translation work performed by foreign private issuers; 58,832 hours + 6,537 hours = 65,369 total hours for Form 6-K work performed by foreign private issuers, or 5.4 hours for foreign private issuer work per Form 6-K.

<sup>212</sup> We estimate cost savings of \$2,260,025 in connection with outside firms' production of Form 6-K during Rule 12h-6's first year of effectiveness. 5,740 hrs.  $\times$  .75  $\times$  \$125/hour = \$538,125 for English translation work; 17,219  $\times$  .25  $\times$  \$400/hour = \$1,721,900 for non-English translation work. \$538,125 + \$1,721,900 = \$2,260,025 in Form 6-K cost savings for outside firms. Thus, Rule 12h-6 could result in total estimated Form 6-K cost savings of \$4,771,100. \$2,511,075 + \$2,260,025 = \$4,771,100.

<sup>213</sup> 78,443 hours  $\times$  .25 = 19,611 hours  $\times$  \$400/hour = \$7,844,400 for non-translation work; 26,148 hours  $\times$  .75 = 19,611 hours  $\times$  \$125/hour = \$2,451,375 for English translation work; \$7,844,400 + \$2,451,375 = \$10,295,775 for total work performed by outside firms. The \$2,078,475 increase reflects the increase in the estimated outside firm hourly rate from \$300 to \$400 and the increase in the estimated outside firm rate for English translation work from \$75 to \$125/hour based on current information provided by financial printer representatives.

<sup>214</sup> We derived this estimate from the number of Form 20-F filers (275) and Form 40-F filers (13)

file a Form 15F to terminate their Exchange Act reporting obligations, which would cause:

- the number of burden hours required to produce Form 15F<sup>215</sup> to total 10,530 hours;<sup>216</sup>
- foreign private issuers to incur a total of 2,633 hours to produce Form 15F;<sup>217</sup> and
- outside firms to incur a total cost of \$3,159,200<sup>218</sup> to produce Form 15F.<sup>219</sup>

#### E. Rule 12g3-2(b) Submissions

We estimate that 685 foreign private issuers currently have obtained the Rule 12g3-2(b) exemption.<sup>220</sup> In addition, we estimate that each Rule 12g3-2(b) exempt issuer currently makes 12 Rule 12g3-2(b) submissions per year for a total of 8,220 Rule 12g3-2(b) submissions. We further estimate that it takes a total of 32,880 annual burden hours, or 4 annual burden hours per submission (for work performed by foreign private issuers and outside firms), to produce the 8,220 Rule 12g3-2(b) submissions.<sup>221</sup>

estimated to elect to terminate their Exchange Act reporting obligations under Rule 12h-6 during the first year of the rule's effectiveness. We then added to this sum (288) the number of prior Form 15 filers (63) estimated to file a Form 15F during the first year of Rule 12h-6's effectiveness in order to make their Form 15 termination or suspension of reporting obligations permanent. The latter number is based on the approximate number of foreign private issuers that filed a Form 15 from 2003 through the present.

<sup>215</sup> In the Original and Reproposing Releases, we estimated that the production of each Form 15F would require 30 hours. We continue to use this estimate for the final rule amendments.

<sup>216</sup> 351 Form 15Fs  $\times$  30 = 10,530 hours.

<sup>217</sup> 10,530 hours  $\times$  .25 = 2,633 hours. This could result in estimated Form 15F costs for foreign private issuers of \$460,775 during Rule 12h-6's first year of effectiveness. 2,633 hrs.  $\times$  \$175 = \$460,775.

<sup>218</sup> 10,530 hours  $\times$  .75 = 7,898 hours; 7,898 hours  $\times$  \$400/hour = \$3,159,200. The \$3,159,200 increase reflects the increase in the number of estimated Form 15F filers and the increase in the estimated outside firm hourly rate from \$300 to \$400.

<sup>219</sup> Thus, Rule 12h-6 could result in total estimated Form 15F costs of \$3,619,975 during its first year of effectiveness. \$460,775 + \$3,159,200 = \$3,619,975.

<sup>220</sup> This estimate is based on Commission staff's most recent annual review of the number of current Rule 12g3-2(b) exempt companies, which will be available soon on our Internet Web site at <http://www.sec.gov/divisions/corpfin.shtml>.

<sup>221</sup> These estimates are the same as the estimates presented in the Reproposing Release. As we stated in that release, the estimates represent an adjustment of 31,080 hours from the 1,800 total hours previously reported for Rule 12g3-2(b) submissions. They reflect a re-evaluation of the number of foreign private issuers that currently claim the Rule 12g3-2(b) exemption, the number of Rule 12g3-2(b) submissions made by them, and the number of burden hours required for their production, in addition to assessing the effects on Rule 12g3-2(b) submissions expected to result from adoption of the final rule amendments. We believe these estimates more accurately reflect the current burden hours required for the collections of information submitted under Rule 12g3-2(b).

During the first year of effectiveness of repropose Rule 12h-6, we estimate that as many as 351 foreign private issuers could claim the Rule 12g3-2(b) exemption immediately upon the effectiveness of their termination of reporting under new Rule 12h-6.<sup>222</sup> This increase in the number of Rule 12g3-2(b) exempt issuers would cause:

- the number of issuers claiming the Rule 12g3-2(b) exemption to total 1,036;
- the number of Rule 12g3-2(b) submissions made annually to total 12,432;
- the number of annual burden hours required to produce these Rule 12g3-2(b) submissions to total 49,728 hours;
- foreign private issuers to incur a total of 31,080 annual burden hours to produce these Rule 12g3-2(b) submissions, or 2.5 annual burden hours per submission;<sup>223</sup> and
- outside firms to incur a total cost of \$4,909,275<sup>224</sup> to produce the Rule 12g3-2(b) submissions.<sup>225</sup>

<sup>222</sup> This amount includes the estimated 288 Form 20-F and 40-F filers expected to terminate their Exchange Act reporting obligations under Rule 12h-6 as well as the estimated 63 prior Form 15 filers expected to file a Form 15F to make their prior termination or suspension of reporting under Rule 12h-6.

<sup>223</sup> Because the home country document submission requirement under Rule 12g3-2(b) is similar to the home country document submission requirement under Form 6-K, we have used the same assumptions regarding the English and non-English translation work required under Rule 12g3-2(b) that we adopted for Form 6-K submissions. Accordingly: 49,728 hours  $\times$  .25 = 12,432 total annual burden hours for English translation work; 49,728 - 12,432 = 37,296 total annual burden hours required for non-English translation work; 37,296 hours  $\times$  .75 = 27,972 total annual burden hours incurred by foreign private issuers for non-English translation work; 12,432 hours  $\times$  .25 = 3,108 total annual hours incurred by foreign private issuers for English translation work; 27,972 + 3,108 = 31,080 total annual burden hours would result from adoption of the new rules and 20,550 hours represents an adjustment from the previous PRA estimates for Rule 12g3-2 submissions.

<sup>224</sup> 49,728 hours  $\times$  .25 = 12,432 hours for English translation work; 12,432 hours  $\times$  .75 = 9,324 hours; 9,324 hours  $\times$  \$125 = \$1,165,500 for English translation work; 49,728 hours - 12,432 hours = 37,296 hours for non-English translation work; 37,296 hours  $\times$  .25 = 9,324 hours; 9,324 hours  $\times$  \$400 = \$3,729,600 for non-English translation work; \$1,165,500 + \$3,729,600 = \$4,895,100 for total work performed by outside firms. Of that total amount, \$1,658,475 would result from adoption of the new rules and \$3,236,625 constitutes an adjustment from the previous PRA estimates for Rule 12g3-2 submissions.

<sup>225</sup> We further estimate that new Rule 12h-6 and the accompanying rule amendments could result in total estimated Rule 12g3-2(b) costs of \$3,501,225 during the first year of their effectiveness. 351 issuers  $\times$  12 submissions/issuer  $\times$  2.5 hrs./submission = 10,530 hours; 10,530 hours  $\times$  \$175/hr. = \$1,842,750 in Rule 12g3-2(b) submission costs for foreign private issuers. For outside firm costs: 351 issuers  $\times$  12 submissions/issuer  $\times$  4 hrs./submission = 16,848 hours; 16,848  $\times$  .25 = 4,212

#### IV. Cost-Benefit Analysis

##### A. Expected Benefits

New Exchange Act Rule 12h-6 and the accompanying rule amendments will benefit U.S. investors to the extent that they remove a possible disincentive for foreign companies that are not currently Exchange Act reporting companies to register their equity and debt securities with the Commission. In response to foreign companies' concerns about Exchange Act reporting and other obligations, these rules will expand the criteria by which a foreign company may terminate those obligations. In so doing, the adopted rule amendments should over time remove an impediment to foreign company access and participation in U.S. public capital markets while still providing U.S. investors with the protections afforded by our Exchange Act reporting regime.

The adopted rule amendments should remove a disincentive for foreign firms to enter our Exchange Act reporting regime by lowering the cost of exiting from that regime. Investors are expected to benefit from the amendments by being able to purchase shares in foreign firms that have been registered with the Commission and that, therefore, provide a high level of investor protection. In addition, U.S. investors may incur lower transaction costs when trading a foreign company's shares on a U.S. exchange relative to a foreign exchange.

To remove a disincentive for foreign companies to enter U.S. public capital markets, the adopted rule amendments will benefit U.S. investors by enabling a foreign Exchange Act reporting company to lower its costs of compliance in connection with Exchange Act deregistration. This reduction in the cost of compliance will directly benefit both foreign companies and their investors, including those resident in the United States.

The final rule amendments will result in foreign private issuers incurring lower costs of Exchange Act compliance in four possible ways. First, rather than require a foreign private issuer to determine the number of its U.S. holders, as is the case under the current exit rules, new Rule 12h-6 will enable a foreign private issuer to rely solely on trading volume data regarding its securities in the United States and on

hours of English translation work;  $4,212 \times .75 \times \$125 = \$394,875$  of English translation costs for outside firms.  $16,848 \text{ hours} \times .75 = 12,636$  hours of non-English translation work;  $12,636 \times .25 \times \$400 = \$1,263,600$  of non-English translation costs for outside firms.  $\$394,875 + \$1,263,600 = \$1,658,475$  in total Rule 12g3-2(b) submission costs for outside firms.  $\$1,842,750 + \$1,658,475 = \$3,501,225$  in total estimated Rule 12g3-2(b) costs.

a worldwide basis when determining whether it may terminate its Exchange Act reporting obligations. Because trading volume data is more easily obtainable than information regarding its U.S. shareholders, the new rule should lower the costs of Exchange Act termination for foreign private issuers.

Second, new Rule 12h-6 will allow a foreign firm to terminate its Exchange Act reporting obligations regarding a class of equity securities and immediately obtain the Rule 12g3-2(b) exemption. Accordingly, such a terminating foreign private issuer would be able to avoid the costs associated with continued annual verification that its number of holders of record remains below 300.

Third, new Rule 12h-6 will permit an issuer to rely on the assistance of an independent information services provider when determining whether it falls below the 300-holder standard. The option to hire an independent information services provider may be a more efficient and cost-effective mechanism to make that determination. Moreover, a foreign company may save costs when assessing its eligibility to terminate its registration and reporting under the 300-holder provision of Rule 12h-6, since the rule will limit the number of jurisdictions in which a foreign private issuer must search for the amount of securities represented by accounts of customers resident in the United States held by brokers, dealers, banks and other nominees. The current rules require a foreign private issuer to conduct a worldwide search for such U.S. customer accounts.

Fourth, once having terminated its reporting obligations under new Rule 12h-6, a foreign company will no longer be required to incur costs associated with producing an Exchange Act annual report or interim Form 6-K reports.<sup>226</sup> Based on estimates and assumptions used for the purpose of the Paperwork Reduction Act, these estimated cost savings could total approximately \$200,000,000 for the first year of Rule 12h-6's effectiveness.<sup>227</sup>

<sup>226</sup> We recognize that, as a result of terminating their Exchange Act reporting obligations under Rule 12h-6, foreign firms may accrue other cost savings that are not specifically quantified in this section. One such example is an investment in an internal control system in order to comply with the Sarbanes-Oxley Act.

<sup>227</sup> As discussed in Part III of this release, for the first year of Rule 12h-6's effectiveness, estimated cost savings in connection with Forms 20-F, 40-F and 6-K could amount to, respectively, \$198,893,750, \$1,321,075, and \$4,771,100, for a total of \$204,985,925. These cost savings could be less to the extent that more foreign private issuers register with the Commission over time as a result of the adoption of Rule 12h-6.

##### B. Expected Costs

Investors could incur costs from the adopted rule amendments to the extent that currently registered foreign companies respond to the rule changes by terminating their Exchange Act registration and reporting obligations with respect to their equity and debt securities. If Exchange Act disclosure requirements provide more information or protection to U.S. or other investors than is provided in an issuer's primary trading market, then all investors, both U.S. and foreign, may suffer the costs of losing that information and protection upon Exchange Act termination.<sup>228</sup> If this is the case, the announcement that a foreign firm is terminating its Exchange Act reporting may result in a loss of share value and the incurrence by investors of higher costs from trading in the firm's equity and debt securities.

There are costs associated with the filing of new Form 15F, which is a requirement for a foreign private issuer that terminates its Exchange Act registration and reporting under Rule 12h-6.<sup>229</sup> A foreign private issuer will also incur costs in connection with having to post on its Internet Web site in English its material home country documents required to maintain the Rule 12g3-2(b) exemption that it will have received upon the effectiveness of its termination of reporting under new Rule 12h-6.<sup>230</sup>

We expect that new Rule 12h-6 will enable some foreign registrants to avoid other recent U.S. regulation, such as the Sarbanes-Oxley Act. Investors will lose the benefits afforded by the Sarbanes-Oxley Act to the extent a current foreign registrant is not fully subject to that Act.

Some U.S. investors might seek to trade in the equity securities of a foreign company following its termination of Exchange Act reporting under Rule 12h-6. U.S. investors seeking to trade the former reporting company's securities in the U.S. may be forced to trade in over-the-counter markets such as the one administered by Pink Sheets, LLC, which could result in higher transaction costs than if the foreign company had continued to have a class of securities registered with the Commission.

<sup>228</sup> Conversely, in countries that have similar regulatory regimes and levels of investor protection, the impact of U.S. deregistration may be mitigated.

<sup>229</sup> As discussed in Part III of this release, based on estimates and assumptions adopted for the purpose of the Paperwork Reduction Act, these costs could total \$3,619,975 during the first year of the new form's use.

<sup>230</sup> As discussed in Part III of this release, based on estimates and assumptions adopted for the Paperwork Reduction Act, these resulting Rule 12g3-2(b) costs could amount to \$3,501,225.

U.S. investors seeking to trade the former reporting company's securities in its primary trading market also could incur additional costs. For example, U.S. investors who held the securities in the form of ADRs could incur costs associated with the depository's conversion of the ADRs into ordinary shares.<sup>231</sup> Moreover, some U.S. investors could incur costs associated with finding and contracting with a new broker-dealer who is able to trade in the foreign reporting company's primary trading market. U.S. investors may face additional costs due to the cost of currency conversion and higher transaction costs trading the securities in a foreign market.

Some investors who wish to make investment decisions regarding former Exchange Act reporting foreign companies also may incur costs to the extent that the information provided by such companies pursuant to any home country regulations is different from that which currently is required under the Exchange Act. Such investors could incur costs associated with hiring an attorney or investment adviser, to the extent that they have not already done so, to explain the material differences, if any, between a foreign company's home country reporting requirements, as reflected in its home country annual report posted on its Internet Web site, and Exchange Act reporting requirements.

#### V. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation Analysis

When adopting rules under the Exchange Act, Section 23(a)(2) of the Exchange Act<sup>232</sup> requires us to consider the impact that any new rule will have on competition. Section 23(a)(2) also prohibits us from adopting any rule that will impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, when engaging in rulemaking that requires us to consider or determine whether an

action is necessary or appropriate in the public interest, Section 3(f) of the Exchange Act<sup>233</sup> requires the Commission to consider whether the action will promote efficiency, competition and capital formation.

In the Reproposing Release, we considered repropose Rule 12h-6 and the accompanying repropose rule amendments in light of the standards set forth in the above statutory sections. We solicited comment on whether, if adopted, repropose Rule 12h-6 and the other repropose rule amendments would result in any anti-competitive effects or promote efficiency, competition and capital formation. We further encouraged commenters to provide empirical data or other facts to support their views on any anti-competitive effects or any burdens on efficiency, competition or capital formation that might result from adoption of repropose Rule 12h-6 and the other repropose rule amendments.

We did not receive any comments or any empirical data in this regard concerning repropose Rule 12h-6 and the accompanying rule amendments. Accordingly, since the adopted rules are substantially similar to the repropose rules, we continue to believe the new rules will provide a foreign reporting company with a more efficient option of exiting the Exchange Act reporting system when U.S. investor interest has become relatively scarce. In so doing, new Rule 12h-6 and the other rule amendments should encourage foreign private issuers to register their equity and debt securities with the Commission by reassuring foreign private issuers that, should interest in the U.S. market for their securities decline sufficiently, they may exit the Exchange Act reporting system with little difficulty.

By providing increased flexibility for foreign private issuers regarding our Exchange Act reporting system, the adopted rules should encourage foreign companies to participate in U.S. capital markets as Exchange Act reporting companies to the benefit of investors. In so doing, the adopted rules should foster increased competition between domestic and foreign firms for investors in U.S. capital markets.

Moreover, by requiring a foreign private issuer that has terminated its Exchange Act reporting under Rule 12h-6 to publish its home country documents required under Exchange Act Rule 12g3-2(b) in English on its Internet Web site or through an electronic information delivery system that is generally available to the public

in its primary trading market, the adopted rules will help ensure that U.S. investors continue to have ready access to material information in English about the foreign private issuer.<sup>234</sup> Thus, new Rule 12h-6 and the accompanying rule amendments should foster increased efficiency in the trading of the issuer's securities for U.S. investors following the issuer's termination of Exchange Act reporting.

#### VI. Regulatory Flexibility Act Certification

Under Section 605(b) of the Regulatory Flexibility Act,<sup>235</sup> we certified that, when adopted, repropose Rule 12h-6 and the accompanying repropose rule amendments would not have a significant economic impact on a substantial number of small entities. We included this certification in Part VI of the Reproposing Release. While we encouraged written comments regarding this certification, no commenters responded to this request.

#### VII. Statutory Basis and Text of Rule Amendments

We are adopting the amendments to Rule 30-1 of Part 200, Rule 101 of Regulation S-T, and Exchange Act Rules 12g3-2, 12g-4 and 12h-3, new Exchange Act Rule 12h-6 and new Exchange Act Form 15F under the authority in sections 6, 7, 10 and 19 of the Securities Act<sup>236</sup> and sections 3(b), 12, 13, 23 and 36 of the Exchange Act.<sup>237</sup>

#### List of Subjects

##### 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

##### 17 CFR Parts 232, 240 and 249

Reporting and recordkeeping requirements, Securities.

#### Text of Rule Amendments

■ For the reasons set out in the preamble, we are amending Title 17, Chapter II of the Code of Federal Regulations as follows.

<sup>234</sup> Similarly, by expanding the scope of the originally proposed Rule 12h-6 to permit prior Form 15 filers to terminate their Exchange Act reporting obligations under the new exit rule and claim the Rule 12g3-2(b) exemption immediately upon such termination, the adopted rules will help promote the availability of material home country information in English about those issuers for U.S. investors.

<sup>235</sup> 5 U.S.C. 605(b).

<sup>236</sup> 15 U.S.C. 77f, 77g, 77j, and 77s.

<sup>237</sup> 15 U.S.C. 78c, 78l, 78m, 78w, and 78mm.

<sup>231</sup> A foreign company may terminate its ADR facility whether or not it is an Exchange Act registrant, and adopted Rule 12h-6 does not require the termination of ADR facilities. In fact, by granting foreign private issuers the Rule 12g3-2(b) exemption immediately upon their termination of reporting with regard to a class of equity securities, Rule 12h-6 will enable foreign private issuers to retain their ADR facilities as unlisted facilities following their termination of reporting under Rule 12h-6. As adopted, Rule 12h-6 will require an issuer that has terminated a sponsored ADR facility to wait a year before it may file a Form 15F in reliance on the trading volume provision of Rule 12h-6 if, on the date of termination, the issuer does not meet the trading volume benchmark.

<sup>232</sup> 15 U.S.C. 78w(a)(2).

<sup>233</sup> 15 U.S.C. 78c(f).

## PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

■ 1. The general authority citation for Part 200 is revised to read as follows:

**Authority:** 15 U.S.C. 77o, 77s, 77sss, 78d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 80a-37, 80b-11, and 7202, unless otherwise noted.

\* \* \* \* \*

■ 2. Amend § 200.30-1 by adding paragraph (e)(17) to read as follows:

### § 200.30-1 Delegation of authority to Director of Division of Corporation Finance.

\* \* \* \* \*

(e) \* \* \*

(17) At the request of a foreign private issuer, pursuant to Rule 12h-6 (§ 240.12h-6 of this chapter), to accelerate the termination of the registration of a class of securities under section 12(g) of the Act (15 U.S.C. 78l(g)) or the duty to file reports under section 13(a) of the Act (15 U.S.C. 78m(a)) or section 15(d) of the Act (15 U.S.C. 78o(d)).

\* \* \* \* \*

## PART 232—REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 3. The authority citation for Part 232 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 80a-8, 80a-29, 80a-30, 80a-37, and 7201 *et seq.*; and 18 U.S.C. 1350.

\* \* \* \* \*

■ 4. Amend § 232.101 by:

- a. Removing the word “and” at the end of paragraph (a)(1)(x);
- b. Removing the period and adding “; and” at the end of paragraph (a)(1)(xi); and
- c. Adding paragraph (a)(1)(xii).  
The addition reads as follows:

### § 232.101 Mandated electronic submissions and exceptions.

(a) \* \* \*

(1) \* \* \*

(xii) Forms 15 and 15F (§ 249.323 and § 249.324 of this chapter).

\* \* \* \* \*

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 5. The general authority citation for Part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-

20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

■ 6. Amend § 240.12g3-2 by revising paragraphs (d)(1) and (d)(2) and adding paragraphs (e) and (f) to read as follows:

### § 240.12g3-2 Exemptions for American depositary receipts and certain foreign securities.

\* \* \* \* \*

(d) \* \* \*

(1) Securities of a foreign private issuer that has or has had during the prior eighteen months any securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act (other than arising solely by virtue of the use of Form F-7, F-8, F-9, F-10 or F-80), except as provided by paragraph (e) of this section;

(2) Securities of a foreign private issuer issued in a transaction (other than a transaction registered on Form F-8, F-9, F-10 or F-80) to acquire by merger, consolidation, exchange of securities or acquisition of assets, another issuer that had securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act, except as provided by paragraph (e) of this section; and

\* \* \* \* \*

(e)(1) A foreign private issuer that has filed a Form 15F (§ 249.324 of this chapter) pursuant to § 240.12h-6 shall receive the exemption provided by paragraph (b) of this section for a class of equity securities immediately upon the effectiveness of the termination of registration of that class of securities under section 12(g) of the Act (15 U.S.C. 78l(g)) or the termination of the duty to file reports regarding that class of securities under section 15(d) of the Act (15 U.S.C. 78o(d)), or both.

(2) Notwithstanding any provision of § 240.12g3-2(b), in order to satisfy the conditions of the § 240.12g3-2(b) exemption received under this paragraph (e), the issuer shall publish in English the information required under paragraph (b)(1)(iii) of this section on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, rather than furnish that information to the Commission.

(3) The § 240.12g3-2(b) exemption received under this paragraph (e) will remain in effect for as long as the foreign private issuer satisfies the electronic publication condition of paragraph (e)(2) of this section or until the issuer registers a class of securities under section 12 of the Act or incurs

reporting obligations under section 15(d) of the Act.

(4) Notwithstanding the time period specified in § 240.12g3-2(d)(1), a foreign private issuer that filed a Form 15F solely with respect to a class of debt securities under section 15(d) of the Act (15 U.S.C. 78o(d)) may establish the exemption provided by paragraph (b) of this section for a class of equity securities upon the effectiveness of its termination of reporting regarding the class of debt securities.

**Notes to Paragraph (e):** 1. In order to maintain the § 240.12g3-2(b) exemption obtained under this paragraph, at a minimum, a foreign private issuer shall electronically publish English translations of the following documents required to be furnished under paragraph (b)(1)(iii) of this section if in a foreign language:

- a. Its annual report, including or accompanied by annual financial statements;
- b. Interim reports that include financial statements;
- c. Press releases; and
- d. All other communications and documents distributed directly to security holders of each class of securities to which the exemption relates.

2. As used in paragraph (e)(2) of this section, primary trading market has the same meaning as under § 240.12h-6(f).

3. A foreign private issuer that files a Form 15F regarding a class of equity securities shall disclose in the Form 15F the address of its Internet Web site or that of the electronic information delivery system in its primary trading market on which it will publish the information required under paragraph (b)(1)(iii) of this section. An issuer need not update the Form 15F to reflect a change in that address.

4. A foreign private issuer that has filed a Form 15F solely with respect to a class of debt securities may establish the exemption under § 240.12g3-2(b) regarding a class of equity securities by submitting an application to the Commission after filing its Form 15F. The issuer must provide in that application the date that it filed its Form 15F as well as the address of its Internet Web site or that of the electronic information delivery system in its primary trading market on which it will publish the information required under paragraph (b)(1)(iii) of this section.

(f)(1) A foreign private issuer that, upon application to the Commission and not after filing a Form 15F, has obtained or will obtain the exemption under § 240.12g3-2(b), may publish the information required under paragraph (b)(1)(iii) of this section on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, rather than furnish that information to the Commission, as long as it complies with the English translation requirements provided in paragraph (e) of this section.

(2) Before a foreign private issuer may publish information electronically pursuant to this paragraph, it must provide the Commission with the address of its Internet Web site or that of the electronic information delivery system in its primary trading market in its application for the exemption under § 240.12g3-2(b) or in an amendment to that application.

■ 7. Amend § 240.12g-4 by:

- a. Removing the authority citations following the section; and
- b. Revising paragraph (a) to read as follows:

**§ 240.12g-4 Certifications of termination of registration under section 12(g).**

(a) Termination of registration of a class of securities under section 12(g) of the Act (15 U.S.C. 78l(g)) shall take effect 90 days, or such shorter period as the Commission may determine, after the issuer certifies to the Commission on Form 15 (17 CFR 249.323) that the class of securities is held of record by:

- (1) Less than 300 persons; or
- (2) Less than 500 persons, where the total assets of the issuer have not exceeded \$10 million on the last day of each of the issuer's most recent three fiscal years.

\* \* \* \* \*

■ 8. Amend § 240.12h-3 by:

- a. Removing the authority citations following the section;
- b. Adding the word "and" at the end of paragraph (b)(1)(ii);
- c. Removing paragraph (b)(2), including the undesignated paragraph;
- d. Redesignating paragraph (b)(3) as (b)(2);
- e. Revising the cite "paragraphs (b)(1)(ii) and (2)(ii)" to read "paragraph (b)(1)(ii)" in paragraph (c); and
- f. Revising the phrase "criteria (i) and (ii) in either paragraph (b)(1) or (2)" to read "either criteria (i) or (ii) of paragraph (b)(1)" in paragraph (d).

■ 9. Add § 240.12h-6 to read as follows:

**§ 240.12h-6 Certification by a foreign private issuer regarding the termination of registration of a class of securities under section 12(g) or the duty to file reports under section 13(a) or section 15(d).**

(a) A foreign private issuer may terminate the registration of a class of securities under section 12(g) of the Act (15 U.S.C. 78l(g)), or terminate the obligation under section 15(d) of the Act (15 U.S.C. 78o(d)) to file or furnish reports required by section 13(a) of the Act (15 U.S.C. 78m(a)) with respect to a class of equity securities, or both, after certifying to the Commission on Form 15F (17 CFR 249.324) that:

(1) The foreign private issuer has had reporting obligations under section 13(a)

or section 15(d) of the Act for at least the 12 months preceding the filing of the Form 15F, has filed or furnished all reports required for this period, and has filed at least one annual report pursuant to section 13(a) of the Act;

(2) The foreign private issuer's securities have not been sold in the United States in a registered offering under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) during the 12 months preceding the filing of the Form 15F, other than securities issued:

- (i) To the issuer's employees;
- (ii) By selling security holders in non-underwritten offerings;
- (iii) Upon the exercise of outstanding rights granted by the issuer if the rights are granted pro rata to all existing security holders of the class of the issuer's securities to which the rights attach;

(iv) Pursuant to a dividend or interest reinvestment plan; or

(v) Upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer;

**Note to Paragraph (a)(2):** The exceptions in paragraphs (a)(2)(iii) through (v) do not apply to securities issued pursuant to a standby underwritten offering or other similar arrangement in the United States.

(3) The foreign private issuer has maintained a listing of the subject class of securities for at least the 12 months preceding the filing of the Form 15F on one or more exchanges in a foreign jurisdiction that, either singly or together with the trading of the same class of the issuer's securities in another foreign jurisdiction, constitutes the primary trading market for those securities; and

(4)(i) The average daily trading volume of the subject class of securities in the United States for a recent 12-month period has been no greater than 5 percent of the average daily trading volume of that class of securities on a worldwide basis for the same period; or

(ii) On a date within 120 days before the filing date of the Form 15F, a foreign private issuer's subject class of equity securities is either held of record by:

- (A) Less than 300 persons on a worldwide basis; or
- (B) Less than 300 persons resident in the United States.

**Note to Paragraph (a)(4):** If an issuer's equity securities trade in the form of American Depositary Receipts in the United States, for purposes of paragraph (a)(4)(i), it must calculate the trading volume of its American Depositary Receipts in terms of the number of securities represented by those American Depositary Receipts.

(b) A foreign private issuer must wait at least 12 months before it may file a Form 15F to terminate its section 13(a) or 15(d) reporting obligations in reliance on paragraph (a)(4)(i) of this section if:

(1) The issuer has delisted a class of equity securities from a national securities exchange or inter-dealer quotation system in the United States, and at the time of delisting, the average daily trading volume of that class of securities in the United States exceeded 5 percent of the average daily trading volume of that class of securities on a worldwide basis for the preceding 12 months; or

(2) The issuer has terminated a sponsored American Depositary Receipts facility, and at the time of termination the average daily trading volume in the United States of the American Depositary Receipts exceeded 5 percent of the average daily trading volume of the underlying class of securities on a worldwide basis for the preceding 12 months.

(c) A foreign private issuer may terminate its duty to file or furnish reports pursuant to section 13(a) or section 15(d) of the Act with respect to a class of debt securities after certifying to the Commission on Form 15F that:

(1) The foreign private issuer has filed or furnished all reports required by section 13(a) or section 15(d) of the Act, including at least one annual report pursuant to section 13(a) of the Act; and

(2) On a date within 120 days before the filing date of the Form 15F, the class of debt securities is either held of record by:

- (i) Less than 300 persons on a worldwide basis; or
- (ii) Less than 300 persons resident in the United States.

(d)(1) Following a merger, consolidation, exchange of securities, acquisition of assets or otherwise, a foreign private issuer that has succeeded to the registration of a class of securities under section 12(g) of the Act of another issuer pursuant to § 240.12g-3, or to the reporting obligations of another issuer under section 15(d) of the Act pursuant to § 240.15d-5, may file a Form 15F to terminate that registration or those reporting obligations if:

(i) Regarding a class of equity securities, the successor issuer meets the conditions under paragraph (a) of this section; or

(ii) Regarding a class of debt securities, the successor issuer meets the conditions under paragraph (c) of this section.

(2) When determining whether it meets the prior reporting requirement under paragraph (a)(1) or paragraph (c)(1) of this section, a successor issuer

may take into account the reporting history of the issuer whose reporting obligations it has assumed pursuant to § 240.12g-3 or § 240.15d-5.

(e) *Counting method.* When determining under this section the number of United States residents holding a foreign private issuer's equity or debt securities:

(1)(i) Use the method for calculating record ownership § 240.12g3-2(a), except that you may limit your inquiry regarding the amount of securities represented by accounts of customers resident in the United States to brokers, dealers, banks and other nominees located in:

(A) The United States;

(B) The foreign private issuer's jurisdiction of incorporation, legal organization or establishment; and

(C) The foreign private issuer's primary trading market, if different from the issuer's jurisdiction of incorporation, legal organization or establishment.

(ii) If you aggregate the trading volume of the issuer's securities in two foreign jurisdictions for the purpose of complying with paragraph (a)(3) of this section, you must include both of those foreign jurisdictions when conducting your inquiry under paragraph (e)(1)(i) of this section.

(2) If, after reasonable inquiry, you are unable without unreasonable effort to obtain information about the amount of securities represented by accounts of customers resident in the United States, for purposes of this section, you may assume that the customers are the residents of the jurisdiction in which the nominee has its principal place of business.

(3) You must count securities as owned by United States holders when publicly filed reports of beneficial ownership or other reliable information that is provided to you indicates that the securities are held by United States residents.

(4) When calculating under this section the number of your United States resident security holders, you may rely in good faith on the assistance of an independent information services provider that in the regular course of its business assists issuers in determining the number of, and collecting other information concerning, their security holders.

(f) *Definitions.* For the purpose of this section:

(1) *Debt security* means any security other than an equity security as defined under § 240.3a11-1, including:

(i) Non-participatory preferred stock, which is defined as non-convertible capital stock, the holders of which are

entitled to a preference in payment of dividends and in distribution of assets on liquidation, dissolution, or winding up of the issuer, but are not entitled to participate in residual earnings or assets of the issuer; and

(ii) Notwithstanding § 240.3a11-1, any debt security described in paragraph (f)(3)(i) and (ii) of this section;

(2) *Employee* has the same meaning as the definition of employee provided in Form S-8 (§ 239.16b of this chapter).

(3) *Equity security* means the same as under § 240.3a11-1, but, for purposes of paragraphs (a)(3) and (a)(4)(i) of this section, does not include:

(i) Any debt security that is convertible into an equity security, with or without consideration;

(ii) Any debt security that includes a warrant or right to subscribe to or purchase an equity security;

(iii) Any such warrant or right; or

(iv) Any put, call, straddle, or other option or privilege that gives the holder the option of buying or selling a security but does not require the holder to do so.

(4) *Foreign private issuer* has the same meaning as under § 240.3b-4.

(5) *Primary trading market* means that:

(i) At least 55 percent of the trading in a foreign private issuer's class of securities that is the subject of Form 15F took place in, on or through the facilities of a securities market or markets in a single foreign jurisdiction or in no more than two foreign jurisdictions during a recent 12-month period; and

(ii) If a foreign private issuer aggregates the trading of its subject class of securities in two foreign jurisdictions for the purpose of paragraph (a)(3) of this section, the trading for the issuer's securities in at least one of the two foreign jurisdictions must be larger than the trading in the United States for the same class of the issuer's securities.

(6) *Recent 12-month period* means a 12-calendar-month period that ended no more than 60 days before the filing date of the Form 15F.

(g)(1) Suspension of a foreign private issuer's duty to file reports under section 13(a) or section 15(d) of the Act shall occur immediately upon filing the Form 15F with the Commission if filing pursuant to paragraph (a), (c) or (d) of this section. If there are no objections from the Commission, 90 days, or such shorter period as the Commission may determine, after the issuer has filed its Form 15F, the effectiveness of any of the following shall occur:

(i) The termination of registration of a class of securities under section 12(g); and

(ii) The termination of a foreign private issuer's duty to file reports under section 13(a) or section 15(d) of the Act.

(2) If the Form 15F is subsequently withdrawn or denied, the issuer shall, within 60 days after the date of the withdrawal or denial, file with or submit to the Commission all reports that would have been required had the issuer not filed the Form 15F.

(h) As a condition to termination of registration or reporting under paragraph (a), (c) or (d) of this section, a foreign private issuer must, either before or on the date that it files its Form 15F, publish a notice in the United States that discloses its intent to terminate its registration of a class of securities under section 12(g) of the Act, or its reporting obligations under section 13(a) or section 15(d) of the Act, or both. The issuer must publish the notice through a means reasonably designed to provide broad dissemination of the information to the public in the United States. The issuer must also submit a copy of the notice to the Commission, either under cover of a Form 6-K (17 CFR 249.306) before or at the time of filing of the Form 15F, or as an exhibit to the Form 15F.

(i)(1) A foreign private issuer that, before the effective date of this section, terminated the registration of a class of securities under section 12(g) of the Act or suspended its reporting obligations regarding a class of equity or debt securities under section 15(d) of the Act may file a Form 15F in order to:

(i) Terminate under this section the registration of a class of equity securities that was the subject of a Form 15 (§ 249.323 of this chapter) filed by the issuer pursuant to § 240.12g-4; or

(ii) Terminate its reporting obligations under section 15(d) of the Act, which had been suspended by the terms of that section or by the issuer's filing of a Form 15 pursuant to § 240.12h-3, regarding a class of equity or debt securities.

(2) In order to be eligible to file a Form 15F under this paragraph:

(i) If a foreign private issuer terminated the registration of a class of securities pursuant to § 240.12g-4 or suspended its reporting obligations pursuant to § 240.12h-3 or section 15(d) of the Act regarding a class of equity securities, the issuer must meet the requirements under paragraph (a)(3) and paragraph (a)(4)(i) or (a)(4)(ii) of this section; or

(ii) If a foreign private issuer suspended its reporting obligations pursuant to § 240.12h-3 or section 15(d) of the Act regarding a class of debt securities, the issuer must meet the

requirements under paragraph (c)(2) of this section.

(3)(i) If the Commission does not object, 90 days after the filing of a Form 15F under this paragraph, or such shorter period as the Commission may determine, the effectiveness of any of the following shall occur:

(A) The termination under this section of the registration of a class of equity securities, which was the subject of a Form 15 filed pursuant to § 240.12g-4, and the duty to file reports required by section 13(a) of the Act regarding that class of securities; or

(B) The termination of a foreign private issuer's reporting obligations under section 15(d) of the Act, which had previously been suspended by the terms of that section or by the issuer's filing of a Form 15 pursuant to § 240.12h-3, regarding a class of equity or debt securities.

(ii) If the Form 15F is subsequently withdrawn or denied, the foreign private issuer shall, within 60 days after the date of the withdrawal or denial, file with or submit to the Commission all reports that would have been required had the issuer not filed the Form 15F.

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 10. The authority citation for Part 249 continues to read in part as follows:

**Authority:** 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

■ 11. Add § 249.324 to read as follows:

**§ 249.324 Form 15F, certification by a foreign private issuer regarding the termination of registration of a class of securities under section 12(g) or the duty to file reports under section 13(a) or section 15(d).**

This form shall be filed by a foreign private issuer to disclose and certify the information on the basis of which it meets the requirements specified in Rule 12h-6 (§ 240.12h-6 of this chapter) to terminate the registration of a class of securities under section 12(g) of the Act (15 U.S.C. 78l(g)) or the duty to file reports under section 13(a) of the Act (15 U.S.C. 78m(a)) or section 15(d) of the Act (15 U.S.C. 78(o)(d)). In each instance, unless the Commission objects, termination occurs 90 days, or such shorter time as the Commission may direct, after the filing of Form 15F.

■ 12. Add Form 15F (referenced in § 249.324) to read as follows:

(Note: The text of Form 15F will not appear in the Code of Federal Regulations.)

OMB APPROVAL

OMB Number: 3235-0621

Expires:

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## United States Securities and Exchange Commission

Washington, DC 20549

### Form 15F—Certification of a Foreign Private Issuer's Termination of Registration of a Class of Securities Under Section 12(g) of the Securities Exchange Act of 1934 or its Termination of the Duty to File Reports Under Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934

Commission File Number \_\_\_\_\_

(Exact name of registrant as specified in its charter)

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

(Title of each class of securities covered by this Form)

Place an X in the appropriate box(es) to indicate the provision(s) relied upon to terminate the duty to file reports under the Securities Exchange Act of 1934:

Rule 12h-6(a)   
(for equity securities)

Rule 12h-6(c)   
(for debt securities)

Rule 12h-6(d)   
(for successor registrants)

Rule 12h-6(i)   
(for prior Form 15 filers)

#### General Instructions

##### A. Who May Use Form 15F and When

1. A foreign private issuer may file Form 15F, pursuant to Rule 12h-6(a) (17 CFR 240.12h-6(a)) under the Securities Exchange Act of 1934 ("Exchange Act"), when seeking to terminate:

- The registration of a class of securities under section 12(g) of the Exchange Act and the corresponding duty to file or furnish reports required by section 13(a) of the Exchange Act; or
- The obligation under section 15(d) of the Exchange Act to file or furnish reports required by section 13(a) of the Act regarding a class of equity securities; or
- Both.

2. A foreign private issuer may file Form 15F, pursuant to Rule 12h-6(c) (17 CFR 240.12h-6(c)), when seeking to terminate its reporting obligations under section 13(a) or section 15(d) of the Exchange Act regarding a class of debt securities.

3. A foreign private issuer may file Form 15F, pursuant to Rule 12h-6(d) (17 CFR 240.12h-6(d)), when seeking to terminate the registration of a class of securities under section 12(g), or reporting obligations under section 13(a) or section 15(d) of the Exchange Act, to which it has succeeded pursuant to Rule 12g-3 (17 CFR 240.12g-3) or Rule 15d-5 (17 CFR 240.15d-5).

4. A foreign private issuer may file Form 15F, pursuant to Rule 12h-6(i) (17 CFR 240.12h-6(i)), if, before the effective date of Rule 12h-6, it terminated the registration of a class of securities under section 12(g) of the Act, or suspended its reporting obligations regarding a class of equity or debt securities under section 15(d) of the Act, in order to:

- Terminate under Rule 12h-6 the registration of a class of equity securities that was the subject of a Form 15 (§ 249.323 of this chapter) filed by the issuer pursuant to § 240.12g-4; or
- Terminate its reporting obligations under section 15(d) of the Act, which had been suspended by the terms of that section or by the issuer's filing of a Form 15 pursuant to § 240.12h-3, regarding a class of equity or debt securities.

##### B. Certification Effected by Filing Form 15F

By completing and signing this Form, the issuer certifies that:

- It meets all of the conditions for termination of Exchange Act reporting specified in Rule 12h-6 (17 CFR 240.12h-6); and
- There are no classes of securities other than those that are the subject of this Form 15F regarding which the issuer has Exchange Act reporting obligations.

##### C. Effective Date

For an issuer filing Form 15F under Rule 12h-6(a), (c) or (d), the duty to file any reports required under section 13(a) or 15(d) of the Exchange Act will be suspended immediately upon filing the Form 15F. If there are no objections from the Commission, 90 days, or within a shorter period as the Commission may determine, after the issuer has filed its Form 15F, there shall take effect:

- the termination of registration of a class of securities under section 12(g) of the Act;
- the termination of the issuer's duty to file or submit reports under section 13(a) or section 15(d) of the Act; or
- both.

For an issuer that has already terminated its registration of a class of equity securities pursuant to Rule 12g-4 or suspended its reporting obligations under section 15(d) or Rule 12h-3, the effectiveness of its termination of section 12(g) registration under Rule 12h-6 and the corresponding duty to file reports required by section 13(a) of the Act, or the termination of its previously suspended reporting obligations under section 15(d) of the Act, shall also occur 90 days after the issuer has filed its Form 15F under Rule 12h-6(i), or within a shorter period as the Commission may determine, if there are no objections from the Commission.

##### D. Other Filing Requirements

You must file Form 15F and related materials, including correspondence, in electronic format via our Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR Part 232). The Form 15F and related materials must be in the English language as required by Regulation S-T Rule 306 (17 CFR 232.306). You must provide the signature required for Form 15F in accordance with Regulation S-

T Rule 302 (17 CFR 232.302). If you have technical questions about EDGAR, call the EDGAR Filer Support Office at (202) 551-8900. If you have questions about the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 551-3610.

If the Form 15F is subsequently withdrawn or denied, you must, within 60 days after the date of the withdrawal or denial, file with or submit to the Commission all reports that would have been required had you not filed the Form 15F. See Rule 12h-6(g)(2) (17 CFR 240.12h-6(g)(2)) and Rule 12h-6(i)(3)(ii) (17 CFR 240.12h-6(i)(3)(ii)).

#### E. Rule 12g3-2(b) Exemption

Regardless of the particular Rule 12h-6 provision under which it is proceeding, a foreign private issuer that has filed a Form 15F regarding a class of equity securities shall receive the exemption under Rule 12g3-2(b) (17 CFR 240.12g3-2(b)) for the subject class of equity securities immediately upon the effective date of its termination of registration and reporting under Rule 12h-6. Refer to Rule 12g3-2(e) (17 CFR 240.12g3-2(e)) for the conditions that a foreign private issuer must meet in order to maintain the Rule 12g3-2(b) exemption following its termination of Exchange Act registration and reporting.

#### Part I

The purpose of this part is to provide information to investors and to assist the Commission in assessing whether you meet the requirements for terminating your Exchange Act reporting under Rule 12h-6. If, pursuant to Rule 12h-6, there is an item that does not apply to you, mark that item as inapplicable.

#### Item 1. Exchange Act Reporting History

A. State when you first incurred the duty to file reports under section 13(a) or section 15(d) of the Exchange Act.

B. State whether you have filed or submitted all reports required under Exchange Act section 13(a) or section 15(d) and corresponding Commission rules for the 12 months preceding the filing of this form, and whether you have filed at least one annual report under section 13(a).

Instruction to Item 1.

If you are a successor issuer that has filed this Form 15F pursuant to Rule 12h-6(d), and are relying on the reporting history of the issuer to which you have succeeded under Rule 12g-3 (17 CFR 12g-3) or Rule 15d-5 (17 CFR 240.15d-5), identify that issuer and provide the information required by this section for that issuer.

#### Item 2. Recent United States Market Activity

State when your securities were last sold in the United States in a registered offering under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act").

Instructions to Item 2.

1. Do not include registered offerings involving the issuance of securities:

- a. to your employees, as that term is defined in Form S-8 (17 CFR 239.16b);
- b. by selling security holders in non-underwritten offerings;

c. upon the exercise of outstanding rights granted by the issuer if the rights are granted pro rata to all existing security holders of the class of the issuer's securities to which the rights attach;

d. pursuant to a dividend or interest reinvestment plan; or

e. upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer.

However, you must include registered offerings described in paragraphs (c) through (e) of this instruction if undertaken pursuant to a standby underwritten offering or other similar arrangement in the United States.

2. If you have registered equity securities on a shelf or other Securities Act registration statement under which securities remain unsold, disclose the last sale of securities under that registration statement. If no sale has occurred during the preceding 12 months, disclose whether you have filed a post-effective amendment to terminate the registration of unsold securities under that registration statement.

#### Item 3. Foreign Listing and Primary Trading Market

A. Identify the exchange or exchanges outside the United States, and the foreign jurisdiction in which the exchange or exchanges are located, on which you have maintained a listing of the class of securities that is the subject of this Form, and which, either singly or together with the trading of the same class of the issuer's securities in another foreign jurisdiction, constitutes the primary trading market for those securities.

B. Provide the date of initial listing on the foreign exchange or exchanges identified in response to Item 3.A. In addition, disclose whether you have maintained a listing of the subject class of securities on one or more of those foreign exchanges for at least the 12 months preceding the filing of this Form.

C. Disclose the percentage of trading in the subject class of securities that occurred in the identified jurisdiction or jurisdictions of your foreign listing as of a recent 12-month period.

Instructions to Item 3

1. When responding to this item, refer to the definition of "primary trading market" in Rule 12h-6(f) (17 CFR 240.12h-6(f)). In accordance with that definition, if your primary trading market consists of two foreign jurisdictions, provide the information required by this section for both foreign jurisdictions. In addition, disclose whether the trading market for your securities in at least one of those two foreign jurisdictions is larger than the trading market for your securities in the United States as of the same recent 12-month period. Disclose the first and last days of that recent 12-month period.

2. For the purpose of the primary trading market determination, you must measure the average daily trading volume of on-exchange transactions in the subject securities aggregated over one or two foreign jurisdictions against your worldwide trading volume. You may include in this measure off-exchange transactions in those jurisdictions comprising the numerator only if you include those off-exchange transactions when calculating worldwide

trading volume in the denominator. This denominator should be the same as the denominator used for the trading volume benchmark under Rule 12h-6(a)(4)(i) (17 CFR 240.12h-6(a)(4)(i)) and Item 4 of this Form.

#### Item 4. Comparative Trading Volume Data

If relying on Rule 12h-6(a)(4)(i), provide the following information:

A. Identify the first and last days of the recent 12-month period used to meet the requirements of that rule provision.

B. For the same recent 12-month period, disclose the average daily trading volume of the class of securities that is the subject of this Form both in the United States and on a worldwide basis.

C. For the same recent 12-month period, disclose the average daily trading volume of the subject class of securities in the United States as a percentage of the average daily trading volume for that class of securities on a worldwide basis.

D. Disclose whether you have delisted the subject class of securities from a national securities exchange or inter-dealer quotation system in the United States. If so, provide the date of delisting, and, as of that date, disclose the average daily trading volume of the subject class of securities in the United States as a percentage of the average daily trading volume for that class of securities on a worldwide basis for the preceding 12-month period.

E. Disclose whether you have terminated a sponsored American depository receipt (ADR) facility regarding the subject class of securities. If so, provide the date of the ADR facility termination, and, as of that date, disclose the average daily trading volume of the subject class of securities in the United States as a percentage of the average daily trading volume for that class of securities on a worldwide basis for the preceding 12-month period.

F. Identify the sources of the trading volume information used for determining whether you meet the requirements of Rule 12h-6. If you used more than one source, disclose the reasons why you used each source.

Instructions to Item 4

1. "Recent 12-month period" means a 12-calendar-month period that ended no more than 60 days before the filing date of this form, as defined under Rule 12h-6(f). You may disclose the comparative trading volume data in response to this item in tabular format and attached as an exhibit to this Form.

2. An issuer is ineligible to rely on paragraph (a)(4)(i) of Rule 12h-6 if, as of the date of delisting or termination of an ADR facility, the average daily trading volume of the subject class of securities in the United States exceeded 5 percent of the average daily trading volume of that class of securities on a worldwide basis, as measured over the preceding 12 months, and 12 months has not elapsed from the date of delisting or termination of the ADR facility. See Rule 12h-6(b) (17 CFR 240.12h-6(b)).

3. For purposes of paragraph (a)(4)(i) of Rule 12h-6:

- a. when determining your U.S. average daily trading volume, you must include all

transactions, whether on-exchange or off-exchange;

b. when determining your worldwide average daily trading volume, in addition to on-exchange transactions, which you must include, you may include off-exchange transactions; and

c. the sources of your trading volume information may include publicly available sources, market data vendors or other commercial information service providers upon which you have reasonably relied in good faith, and as long as the information does not duplicate any other trading volume information obtained from exchanges or other sources.

#### *Item 5. Alternative Record Holder Information*

If relying on Rule 12h-6(a)(4)(ii) (17 CFR 240.12h-6(a)(4)(ii)):

Disclose the number of record holders of the subject class of equity securities on a worldwide basis or who are United States residents at a date within 120 days before filing this Form. Disclose the date used for the purpose of Item 5.

#### *Item 6. Debt Securities*

If relying on Rule 12h-6(c) (17 CFR 240.12h-6(c)):

Disclose the number of record holders of your debt securities either on a worldwide basis or who are United States residents at a date within 120 days before the date of filing of this Form. Disclose the date used for the purpose of Item 6.

Instructions to Items 5 and 6

1. When determining the number of record holders of your equity or debt securities who are United States residents, refer to Rule 12h-6(e) (17 CFR 240.12h-6(e)) for the appropriate counting method.

2. If you have relied upon the assistance of an independent information services provider to determine the number of your United States equity or debt securities holders, identify this party in your response.

#### *Item 7. Notice Requirement*

If filing Form 15F pursuant to Rule 12h-6(a), (c) or (d):

A. Disclose the date of publication of the notice, required by Rule 12h-6(h) (17 CFR 240.12h-6(h)), disclosing your intent to terminate your duty to file reports under section 13(a) or 15(d) of the Exchange Act or both.

B. Identify the means, such as publication in a particular newspaper or transmission by a particular wire service, used to disseminate the notice in the United States.

Instruction to Item 7

If you have submitted a copy of the notice under cover of a Form 6-K (17 CFR 249.306),

disclose the submission date of the Form 6-K. If not, attach a copy of the notice as an exhibit to this Form. See Rule 12h-6(h).

#### *Item 8. Prior Form 15 Filers*

If relying on Rule 12h-6(i):

A. Disclose whether, before the effective date of Rule 12h-6, you filed a Form 15 (17 CFR 249.323) to terminate the registration of a class of equity securities pursuant to Rule 12g-4 (17 CFR 240.12g-4) or to suspend your reporting obligations under section 15(d) of the Act regarding a class of equity or debt securities pursuant to Rule 12h-3 (17 CFR 240.12h-3). If so, disclose the date that you filed the Form 15. If you suspended your reporting obligations by the terms of section 15(d), disclose the effective date of that suspension as well as the date that you filed a Form 15 to notify the Commission of that suspension pursuant to Rule 15d-6 (17 CFR 240.15d-6).

B. If you terminated the registration of a class of securities pursuant to Rule 12g-4 or suspended your reporting obligations pursuant to Rule 12h-3 or by the terms of section 15(d) of the Act regarding a class of equity securities, provide the disclosure required by Item 3 of this Form, "Primary Trading Market." Further provide the disclosure required by Item 4 of this Form, "Comparative Trading Volume Data," or the disclosure required by Item 5 of the Form, "Alternative Record Holder Information."

C. If you suspended your reporting obligations pursuant to Rule 12h-3 or by the terms of section 15(d) of the Act regarding a class of debt securities, provide the disclosure required by Item 6 of this Form, "Debt Securities."

#### **Part II**

#### *Item 9. Rule 12g3-2(b) Exemption*

Disclose the address of your Internet Web site or of the electronic information delivery system in your primary trading market on which you will publish the information required under Rule 12g3-2(b)(1)(iii) (17 CFR 240.12g3-2(b)(1)(iii)).

Instruction to Item 9

Refer to Note 1 to Rule 12g3-2(e) for instructions regarding providing English translations of documents published pursuant to Rule 12g3-2(b)(1)(iii) (17 CFR 240.12g3-2(b)(1)(iii)).

#### **Part III**

#### *Item 10. Exhibits*

List the exhibits attached to this Form.  
Instruction to Item 10

In addition to exhibits specifically mentioned on this Form, you may attach as an exhibit any document providing

information that is material to your eligibility to terminate your reporting obligations under Exchange Act Rule 12h-6. You should refer to any relevant exhibit when responding to the items on this Form.

#### *Item 11. Undertakings*

Furnish the following undertaking:

The undersigned issuer hereby undertakes to withdraw this Form 15F if, at any time before the effectiveness of its termination of reporting under Rule 12h-6, it has actual knowledge of information that causes it reasonably to believe that, at the time of filing the Form 15F:

(1) The average daily trading volume of its subject class of securities in the United States exceeded 5 percent of the average daily trading volume of that class of securities on a worldwide basis for the same recent 12-month period that the issuer used for purposes of Rule 12h-6(a)(4)(i);

(2) Its subject class of securities was held of record by 300 or more United States residents or 300 or more persons worldwide, if proceeding under Rule 12h-6(a)(4)(ii) or Rule 12h-6(c); or

(3) It otherwise did not qualify for termination of its Exchange Act reporting obligations under Rule 12h-6.

Instruction to Item 11

After filing this Form, an issuer has no continuing obligation to make inquiries or perform other work concerning the information contained in this Form, including its assessment of trading volume or ownership of its securities in the United States.

#### **Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934, [name of registrant as specified in charter] has duly authorized the undersigned person to sign on its behalf this certification on Form 15F. In so doing, [name of registrant as specified in charter] certifies that, as represented on this Form, it has complied with all of the conditions set forth in Rule 12h-6 for terminating its registration under section 12(g) of the Exchange Act, or its duty to file reports under section 13(a) or section 15(d) of the Exchange Act, or both.

Dated: March 27, 2007.

By the Commission.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E7-5947 Filed 4-4-07; 8:45 am]

**BILLING CODE 8010-01-P**



# Federal Register

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**Thursday,  
April 5, 2007**

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## **Part IV**

# **Department of Veterans Affairs**

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**38 CFR Part 21**

**Veterans and Dependents Education:  
Topping-Up Tuition Assistance; Licensing  
and Certification Tests; Duty To Assist  
Education Claimants; Final Rule**

**DEPARTMENT OF VETERANS  
AFFAIRS**

**38 CFR Part 21**

**RIN 2900-AK80**

**Veterans and Dependents Education:  
Topping-Up Tuition Assistance;  
Licensing and Certification Tests; Duty  
To Assist Education Claimants**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) adopts this final rule to amend the regulations governing various aspects of the education program VA administers. The final rule includes provisions for the payment of educational assistance under Survivors' and Dependents' Educational Assistance, the Post-Vietnam Era Veterans' Educational Assistance Program, and the Montgomery GI Bill—Active Duty (MGIB) for the cost of taking tests for licensure or certification; provisions for the payment of MGIB to individuals on active duty for the difference between the portion of tuition and expenses covered by off-duty military tuition assistance programs and the actual charges made by educational institutions; provisions regarding VA's duty to assist claimants filing claims for educational assistance under the education programs VA administers; and nonsubstantive changes for the purpose of clarity, technical changes, or restatements of statutory provisions.

**DATES:** *Effective Date:* This final rule is effective May 7, 2007.

*Applicability Dates:* The provisions that apply to approval of licensing or certification tests or the payment of educational assistance for the cost of taking such tests are applied retroactively to March 1, 2001, as payment for such tests is authorized for tests taken on or after March 1, 2001, in the Veterans Benefits and Health Care Improvement Act of 2000.

The provisions concerning payment under the MGIB for "tuition assistance top-up" are applied retroactively to October 30, 2000, the date of enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001.

The provisions concerning VA's duty to assist claimants filing claims for educational assistance apply to claims filed on or after November 9, 2000, the date of enactment of the Veterans Claims Assistance Act of 2000.

**FOR FURTHER INFORMATION CONTACT:** Lynn M. Nelson, Education Advisor, Education Service, Veterans Benefits Administration, Department of Veterans

Affairs (225C), 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-7187.

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on February 22, 2006 (71 FR 9196), VA published a proposed rule proposing to amend subparts B, D, G, and K of 38 CFR part 21, regarding payment of educational assistance for the cost of licensure or certification tests; payment of MGIB educational assistance to pay the difference between the amount of tuition assistance paid by the military and the actual charges made by the educational institution; and the timing and the scope of assistance VA will provide to claimants under the education programs VA administers who file substantially complete applications for benefits, or who attempt to reopen previously denied claims; and various nonsubstantive changes. Some of the provisions in the proposed rule contained proposed collections of information.

Interested persons were given 60 days to submit comments. VA received one comment from a veterans' service organization concerning a provision in proposed 38 CFR 21.1031(b)(3). In 38 CFR 21.1031, "VA responsibilities when a claim is filed," VA proposed to revise § 21.1031(b), with the heading "VA has a duty to notify claimants of necessary information or evidence." Proposed § 21.1031(b)(1) includes provisions concerning the contents of such notice and the circumstances under which VA has the responsibility to provide such notice to a claimant for educational assistance benefits. Proposed § 21.1031(b)(2) includes provisions concerning a one-year time period for providing the information and evidence that the notice informs the claimant that the claimant must provide, and authorizing VA after that period to adjudicate the claim based on the information and evidence in the file.

The organization's comment concerned the proposed provision in § 21.1031(b)(3) that would permit VA, after providing notice to a claimant under proposed § 21.1031(b)(1), to decide a claim for educational assistance 30 days after the request for information or evidence if the claimant has not responded. The comment contended that § 21.1031 "should allow 60 days for response, similar to a compensation or pension claim." The comment stated that "[w]e feel there is no obvious reason to require a veteran or organization to respond so quickly \* \* \*."

As noted in the preamble to the proposed rule, VA issued a final rule in

the **Federal Register** of August 29, 2001 (66 FR 45620) amending 38 CFR part 3 to carry out provisions of the Veterans Claims Assistance Act of 2000 with respect to claims for benefits that are governed by 38 CFR part 3 (including compensation, pension, dependency and indemnity compensation, burial benefits, monetary benefits ancillary to those benefits, and special benefits) (66 FR 45629). Proposed § 21.1031(b)(3) sets out the same 30-day provision as does current 38 CFR 3.159(b)(1), which was adopted in the 2001 final rule for 38 CFR part 3: that if the claimant has not responded to the request within 30 days, VA may decide the claim before the expiration of the one-year period in which the claimant may respond. Under both § 3.159(b)(1) and the proposed § 21.1031(b)(3), if the claimant subsequently submits the specified evidence or information within one year of VA's request, VA must readjudicate the claim.

As noted in the preamble to the final rule that adopted the 30-day period under § 3.159(b)(1), a claimant may delay VA action beyond the 30 days by responding with a request that VA wait beyond the 30-day period while the claimant attempts to gather evidence (66 FR 45623). This would be true under the similar language of proposed § 21.1031(b)(3).

Under § 3.159, it is within VA's discretion to issue a decision after the time period specified in the regulation, or specified in a notice to a claimant, as the time after which VA may decide a claim. As indicated in the comment comparing the 30-day period in proposed § 21.1031(b)(3) to a 60-day period for compensation and pension claims, VA has stated in notices sent under § 3.159 to claimants for compensation or pension benefits that VA may decide the claim if the claimant did not respond within 60 days.

VA has concluded that, under the circumstances concerning the claims for education benefits to which § 21.1031 applies, it is appropriate for this final rule to adopt the 30-day time period that VA proposed for § 21.1031(b)(3), even if, as the comment noted, a different period may be used for certain other benefits administered by VA.

Unlike the various types of information and evidence that are generally needed in substantiating a service-connected disability for compensation purposes or a qualifying disability and financial need for pension, substantiating eligibility under one of the various educational assistance programs VA administers generally requires only proof of military service.

In addition, VA generally has needed more than the 30-day time period in the current § 3.159 before VA would have been able to issue a determination on a compensation and pension claim. In contrast, in most instances, prior to or within a 30-day period from the date that VA provides notice requesting additional information or evidence from a claimant under an educational assistance program, VA has the necessary information available to determine a claimant's eligibility under an educational assistance program. However, VA might not have sufficient information to determine an individual's personal monthly rate of educational assistance (education benefit). For example, under the MGIB program, the October 1, 2005, full-time rate of basic educational assistance for an individual who served three continuous years or more on active duty is \$1,034. Some individuals qualify for a MGIB full-time rate that exceeds \$1,034 due to: voluntary contributions they made while serving on active duty; entitlement to the Army or Navy College Fund; or by serving in the Selected Reserve in a critical military occupation or unit. If VA requested information from a claimant to substantiate his or her entitlement to a rate exceeding \$1,034, and the claimant did not provide that information within 30 days, VA could make a decision based on the evidence of record and award benefits. Thus, VA could award MGIB benefits based on the basic full-time monthly rate of \$1,034 instead of waiting to make a decision until the claimant submitted evidence supporting entitlement to a higher benefit rate. Then, if the claimant subsequently submits evidence to support entitlement to a higher benefit rate (within one year of VA's letter requesting the evidence), VA would, as would be required under § 21.1031, readjudicate the claim, and when appropriate recalculate the rate and award benefits based on the higher monthly rate. VA would pay the claimant any additional monies due him or her based on the recalculation, including any applicable retroactive payment.

In addition to providing claimants with funds sooner (as in the example in the paragraph above), VA chose a 30-day period to encourage the claimant to respond quickly so that the claimant knows as soon as possible whether or not he or she is entitled to benefits. Many of the claimants seeking educational assistance file an application with VA when they enroll with an educational institution. Many educational institutions have a period of

time, referred to as the "drop/add period", during which a student can drop his or her classes without incurring tuition costs. The sooner the claimant receives VA's formal determination regarding his or her eligibility status, the sooner he or she can make a decision regarding his or her continued enrollment.

Considering that claimants generally have incurred education expenses, that education claims do not generally require the types of information and evidence necessary to substantiate compensation or pension claims, that VA can provide a determination and funds sooner with a 30-day response period, that under the provisions of proposed § 21.1031, if the claimant subsequently submits evidence or information to support the claim within one year of VA's letter requesting the evidence, VA would readjudicate the claim, and the other reasons discussed above, VA is making in the final rule no change to the proposed 30-day response period in 38 CFR 21.1031(b)(3).

Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule without change except that in the proposed parenthetical statements following sections in the proposed rule with information collection provisions we are, where applicable, making changes in the final rule to display the approved information collection control numbers that have been assigned by the Office of Management and Budget (OMB).

#### **Paperwork Reduction Act of 1995**

This final rule contains provisions that constitute collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). In the preamble of the proposed rule, we described the collections in the proposed rule that would need approval by OMB and provided a comment period. We did not receive any comments concerning those collections. OMB has approved those proposed collections, and has assigned control numbers 2900–0051, 2900–0682, 2900–0695, 2900–0696, 2900–0697, and 2900–0698 to them. We display the control numbers under the applicable sections of the regulations in this final rule. OMB assigns a control number for each collection of information it approves. VA 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.

#### **Executive Order 12866**

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by OMB unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it raises novel policy issues.

#### **Regulatory Flexibility Act**

The Secretary of Veterans Affairs hereby certifies that this final rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Although this final rule will affect some small entities that are testing organizations or educational institutions, any economic impact on them would be minor. The portions of this rule that could have an economic impact on these small entities are recordkeeping, reporting, and application for approval requirements, the burdens for which would be the minor ones that were discussed in the preamble of the proposed rule under the heading *Paperwork Reduction Act of 1995*. Pursuant to 5 U.S.C. 605(b), this rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This rule has no such effect on State, local, and tribal governments, or the private sector.

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for programs that are affected by this rule are 64.117, Survivors and Dependents Educational Assistance; 64.120, Post-Vietnam Era Veterans' Educational Assistance; and 64.124, All-Volunteer Force Educational Assistance. This rule also affects the Montgomery GI Bill—Selected Reserve program, for which there is no Catalog of Federal Domestic Assistance number.

### List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 30, 2006.

#### Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set out above, VA amends 38 CFR part 21 (subparts B, D, G, and K) as follows:

### PART 21—VOCATIONAL REHABILITATION AND EDUCATION

#### Subpart B—Claims and Applications for Educational Assistance

■ 1. The authority citation for part 21, subpart B is revised to read as follows:

**Authority:** 38 U.S.C. 501(a), ch. 51, and as noted in specific sections.

■ 2. Section 21.1029 is amended by:

■ a. Revising the introductory text.

■ b. In paragraph (b)(1), removing “§ 21.1032” and adding, in its place, “§ 21.1033”.

■ c. Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (i), respectively.

■ d. Adding new paragraph (c).

■ e. In newly redesignated paragraph (e)(1)(ii), removing “paragraph (c)(1)(i)” and adding, in its place, “paragraph (d)(1)(i)”.

■ f. In newly redesignated paragraph (e)(4), removing “school” and adding, in its place, “educational institution or training establishment”.

■ g. Adding paragraphs (f), (g), and (h) following the authority citation for paragraph (e).

The revision and additions read as follows:

#### § 21.1029 Definitions.

The following definitions of terms apply to this subpart and subparts C, D, F, G, H, K, and L, to the extent that the terms are not otherwise defined in those subparts:

\* \* \* \* \*

(c) *Educational institution.* The term *educational institution* means:

(1) A vocational school or business school;

(2) A junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution;

(3) A public or private elementary school or secondary school;

(4) Any entity, other than an institution of higher learning, that provides training for completion of a State-approved alternative teacher certification program;

(5) An organization or entity offering a licensing or certification test; or

(6) Any private entity that offers, either directly or indirectly under an agreement with another entity, a course or courses to fulfill requirements for the attainment of a license or certificate generally recognized as necessary to obtain, maintain, or advance in employment in a profession or vocation in a high technology occupation.

(Authority: 38 U.S.C. 3452, 3501(a)(6), 3689(d))

\* \* \* \* \*

(f) *Information.* The term *information* means nonevidentiary facts, such as the claimant's Social Security number or address, or the name of the educational institution the claimant is attending.

(Authority: 38 U.S.C. 5101, 5102, 5103)

(g) *Substantially complete application.* (1) The term *substantially complete application* means, for an individual's first application for educational assistance administered by VA, an application containing—

(i) The claimant's name;

(ii) His or her relationship to the veteran, if applicable;

(iii) Sufficient information for VA to verify the claimed service, if applicable;

(iv) The benefit claimed;

(v) The program of education, if applicable; and

(vi) The name of the educational institution or training establishment the claimant intends to attend, if applicable.

(2) For subsequent applications for educational assistance administered by VA, a *substantially complete application* means an application containing the information specified in paragraphs (g)(1)(i) through (g)(1)(vi) of this section, except that the application may omit any information specified in paragraphs (g)(1)(ii) or (g)(1)(iii) of this section that is already of record with VA.

(Authority: 38 U.S.C. 5102, 5103, 5103A)

(h) *Training establishment.* The term *training establishment* means any establishment providing apprentice or other training on-the-job, including those under the supervision of a college, university, any State department of education, any State apprenticeship agency, any State board of vocational education, any joint apprenticeship committee, the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. chapter 4C, or any agency of the Federal government authorized to supervise such training.

(Authority: 38 U.S.C. 3452(e), 3501(a)(9))

■ 3. Section 21.1030 is revised to read as follows:

#### § 21.1030 Claims.

(a) *Claim for educational assistance.*

(1) The first time an individual claims educational assistance administered by VA for pursuit of a program of education, he or she must file an application for educational assistance using a form the Secretary prescribes for that purpose.

(2) If an individual changes his or her program of education or place of training after filing his or her first application for educational assistance, he or she must file an application requesting the change of program or place of training using a form the Secretary prescribes for that purpose.

(3) A servicemember must consult with his or her education service officer before filing an application for educational assistance, whether it is the first application or an application to request a change of program or place of training.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 501, 3034(a), 3241(a), 3471, 3513, 5101(a))

(b) *Filing a claim for educational assistance to pay for a licensing or certification test.* To receive educational assistance to pay for a licensing or

certification test, an individual must file a claim for educational assistance.

(1) If the claim is the first claim for educational assistance administered by VA, the individual must file an application for educational assistance using a form the Secretary prescribes for that purpose and must include the information described in paragraphs (b)(2)(i) through (b)(2)(vi) of this section.

(2) If the claim is the second or subsequent claim for educational assistance, the claim must include:

- (i) The name of the test;
- (ii) The name and address of the organization or entity issuing the license or certificate;
- (iii) The date the claimant took the test;
- (iv) The cost of the test;
- (v) A statement authorizing release of the claimant's test information to VA, such as: "I authorize release of my test information to VA"; and
- (vi) Such other information as the Secretary may require.

(Authority: 38 U.S.C. 501, 3034(a), 3241(a), 3471, 3513, 5101(a))

(c) *Filing a claim for educational assistance to supplement tuition assistance provided under a program administered by the Secretary of a military department.* To receive *tuition assistance top-up* as defined in § 21.4200(hh), an individual must file a claim for educational assistance.

(1) If the claim is the first claim for educational assistance administered by VA, the individual must file an application for educational assistance using a form the Secretary prescribes for that purpose.

(2) If the claim is the second or subsequent claim for educational assistance, the claimant may submit a statement that he or she wishes to receive tuition assistance top-up.

(3) The claimant must also submit a copy of the form(s) that the military service with jurisdiction requires for tuition assistance and that had been presented to the educational institution, covering the course or courses for which the claimant wants tuition assistance top-up. Examples of these forms include:

- (i) DA Form 2171, Request for Tuition Assistance-Army Continuing Education System;
- (ii) AF Form 1227, Authority for Tuition Assistance-Education Services Program;

(iii) NAVMC 10883, Application for Tuition Assistance, and either NAVEDTRA 1560/5, Tuition Assistance Authorization or NAVMC (page 2), Tuition Assistance Authorization;

(iv) Department of Homeland Security, USCG CG-4147, Application for Off-Duty Assistance; and

(v) Request for Top-Up: eArmyU Program.

(4) The claimant must also provide to VA the following information, to the extent it is not contained on any form filed under paragraph (c)(1) or (c)(3) of this section:

- (i) His or her name;
- (ii) His or her Social Security number;
- (iii) The name of the educational institution;
- (iv) The name of the course or courses for which the claimant wants educational assistance;
- (v) The number of the course or courses;
- (vi) The number of credit hours for each course;
- (vii) The beginning and ending date of each course;
- (viii) The cost of the course or courses; and
- (ix) If the claimant doesn't want to receive the full amount of that cost not met by the Secretary of the military department concerned, the portion that the claimant wishes to receive.

(5) If the claimant's military department uses an electronic tuition assistance application process with electronic signatures, VA will accept an electronic transmission of the approved tuition assistance application directly from the military department concerned on behalf of the claimant if—

- (i) The electronic tuition assistance application indicates the servicemember's intent to claim tuition-assistance top-up; and
- (ii) The information described in paragraph (c)(4) of this section is included in the electronic application.

(Authority: 38 U.S.C. 501, 3034(a), 3241(a), 3471, 3513, 5101(a))

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900-0074, 2900-0098, 2900-0099, 2900-0154, 2900-0695, and 2900-0698.)

- 4. Section 21.1031 is amended by:
  - a. In paragraph (a), removing "claim forms," and adding, in its place, "VA claim forms and".
  - b. Revising paragraph (b) to read as follows.

**§ 21.1031 VA responsibilities when a claim is filed.**

\* \* \* \* \*

(b) *VA has a duty to notify claimants of necessary information or evidence.*

(1) Except when a claim cannot be substantiated because there is no legal basis for the claim, or undisputed facts render the claimant ineligible for the

claimed benefit, when VA receives a complete or substantially complete application for educational assistance provided under subpart C, D, G, H, K, or L of this part VA will—

(i) Notify the claimant of any information and evidence that is necessary to substantiate the claim; and

(ii) Inform the claimant which information and evidence, if any, the claimant is to provide to VA and which information and evidence, if any, VA will try to obtain for the claimant.

(2) The information and evidence that VA, pursuant to paragraph (b)(1) of this section informs the claimant that the claimant must provide, must be provided within one year from the date of the notice. If VA does not receive such information and evidence from the claimant within that time period, VA may adjudicate the claim based on the information and evidence in the file.

(3) If the claimant has not responded to the request within 30 days, VA may decide the claim before the expiration of the one-year period prescribed in paragraph (b)(2) of this section, based on all the information and evidence in the file, including information and evidence it has obtained on behalf of the claimant. If VA does so, however, and the claimant subsequently provides the information and evidence within one year of the date of the request, VA must readjudicate the claim. If VA's decision on a readjudication is favorable to the claimant, the award shall take effect as if the prior decision by VA on the claim had not been made.

(4) If VA receives an incomplete application for benefits, it will notify the claimant of the information necessary to complete the application and will defer assistance until the claimant submits this information. If the information necessary to complete the application is not received by VA within one year from the date of such notice, VA cannot pay or provide any benefits based on that application.

(5) For the purpose of this paragraph, if VA must notify the claimant, VA will provide notice to:

- (i) The claimant;
- (ii) His or her fiduciary, if any; and
- (iii) His or her representative, if any.

(Authority: 38 U.S.C. 5102, 5103, 5103A(a)(3))

**§ 21.1032 [Redesignated as § 21.1033]**

■ 5. Section 21.1032 is redesignated as § 21.1033.

■ 6. New § 21.1032 is added to read as follows:

**§ 21.1032 VA has a duty to assist claimants in obtaining evidence.**

(a) *VA's duty to assist begins when VA receives a complete or substantially complete application.* (1) Except as provided in paragraph (d) of this section, upon receipt of a complete or substantially complete application for educational assistance under subpart C, D, G, H, K, or L of this part, VA will—

- (i) Make reasonable efforts to help a claimant obtain evidence necessary to substantiate the claim; and
- (ii) Give the assistance described in paragraphs (b) and (c) of this section to an individual attempting to reopen a finally decided claim.

(2) VA will not pay any fees a custodian of records may charge to provide the records VA requests.

(Authority: 38 U.S.C. 5103A)

(b) *Obtaining records not in the custody of a Federal department or agency.* (1) VA will make reasonable efforts to obtain relevant records not in the custody of a Federal department or agency. These records include relevant records from:

- (i) State or local governments;
- (ii) Private medical care providers;
- (iii) Current or former employers; and
- (iv) Other non-Federal governmental sources.

(2) The reasonable efforts described in paragraph (b)(1) of this section will generally consist of an initial request for the records and, if VA does not receive the records, at least one follow-up request. The following are exceptions to this provision concerning the number of requests that VA generally will make:

- (i) VA will not make a follow-up request if a response to the initial request indicates that the records sought do not exist or that a follow-up request for the records would be futile.
- (ii) If VA receives information showing that subsequent requests to the initial or another custodian could result in obtaining the records sought, reasonable efforts will include an initial request and, if VA does not receive the records, at least one follow-up request to the new source or an additional request to the original source.

(3) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from non-Federal agency or department custodians. The claimant must provide enough information to identify and locate the existing records, including—

- (i) The person, company, agency, or other custodian holding the records;
- (ii) The approximate time frame covered by the records; and
- (iii) In the case of medical treatment records, the condition for which treatment was provided.

(4) If necessary, the claimant must authorize the release of existing records in a form acceptable to the person, company, agency, or other custodian holding the records.

(Authority: 38 U.S.C. 5103A)

(c) *Obtaining records in the custody of a Federal department or agency.* (1) VA will make as many requests as are necessary to obtain relevant records from a Federal department or agency. These records include but are not limited to:

- (i) Military records;
- (ii) Medical and other records from VA medical facilities;
- (iii) Records from non-VA facilities providing examination or treatment at VA expense; and
- (iv) Records from other Federal agencies.

(2) VA will end its efforts to obtain records from a Federal department or agency only if VA concludes that the records sought do not exist or that further efforts to obtain those records would be futile. Cases in which VA may conclude that no further efforts are required include cases in which the Federal department or agency advises VA that the requested records do not exist or that the custodian of such records does not have them.

(3) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from Federal department or agency custodians. At VA's request, the claimant must provide enough information to identify and locate the existing records, including—

- (i) The custodian or agency holding the records;
- (ii) The approximate time frame covered by the records; and
- (iii) In the case of medical treatment records, the condition for which treatment was provided.

(4) If necessary, the claimant must authorize the release of existing records in a form acceptable to the custodian or agency holding the records.

(Authority: 38 U.S.C. 5103A)

(d) *Circumstances where VA will refrain from or discontinue providing assistance.* VA will refrain from providing assistance in obtaining evidence for a claim if the substantially complete or complete application for benefits indicates that there is no reasonable possibility that any assistance VA would provide to the claimant would substantiate the claim. VA will discontinue providing assistance in obtaining evidence for a claim if the evidence obtained indicates that there is no reasonable possibility that further assistance would substantiate the claim. Circumstances in

which VA will refrain from or discontinue providing assistance in obtaining evidence include, but are not limited to:

(1) The claimant's ineligibility for the benefit sought because of lack of qualifying service, lack of veteran status, or other lack of legal eligibility;

(2) Claims that are inherently not credible or clearly lack merit; and

(3) An application requesting a benefit to which the claimant is not entitled as a matter of law.

(Authority: 38 U.S.C. 5103A)

(e) *Duty to notify claimant of inability to obtain records.* (1) VA will notify the claimant either orally or in writing when VA:

(i) Makes reasonable efforts to obtain relevant non-Federal records, but is unable to obtain them; or

(ii) After continued efforts to obtain Federal records, concludes that it is reasonably certain they do not exist or that further efforts to obtain them would be futile.

(2) For non-Federal records requests, VA may provide the notice to the claimant at the same time it makes its final attempt to obtain the relevant records.

(3) VA will make a record of any oral notice conveyed under paragraph (e) of this section to the claimant.

(4) The notice to the claimant must contain the following information:

(i) The identity of the records VA was unable to obtain;

(ii) An explanation of the efforts VA made to obtain the records;

(iii) The fact described in paragraph (e)(1)(i) or (e)(1)(ii) of this section;

(iv) A description of any further action VA will take regarding the claim, including, but not limited to, notice that VA will decide the claim based on the evidence of record unless the claimant submits the records VA was unable to obtain; and

(v) A notice that the claimant is ultimately responsible for obtaining the evidence.

(5) If VA becomes aware of the existence of relevant records before deciding the claim, VA will notify the claimant of the existence of such records and ask that the claimant provide a release for the records. If the claimant does not provide any necessary release of the relevant records that VA is unable to obtain, VA will ask that the claimant obtain the records and provide them to VA.

(6) For the purpose of this section, if VA must notify the claimant, VA will provide notice to:

(i) The claimant;

(ii) His or her fiduciary, if any; and

(iii) His or her representative, if any.

(Authority: 38 U.S.C. 5102(b), 5103(a), 5103A)

#### § 21.1033 [Amended]

■ 6a. Newly redesignated § 21.1033 is amended by removing and reserving paragraph (b).

#### Subpart D—Administration of Educational Assistance Programs

■ 7. The authority citation for part 21, subpart D is revised to read as follows:

**Authority:** 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, and as noted in specific sections.

■ 8. Section 21.4005 is amended by:

■ a. Adding introductory text to the section.

■ b. Revising the paragraph (a) heading and paragraphs (a)(1) and (a)(2), and the authority citation at the end of paragraph (a).

■ c. Redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(5) and (a)(7), respectively.

■ d. Adding new paragraphs (a)(3), (a)(4), and (a)(6).

■ e. In newly redesignated paragraph (a)(5), removing “a school” and adding, in its place, “an educational institution” and removing “such school.” and adding, in its place, “such educational institution.”

■ f. Redesignating paragraphs (b)(1)(ii)(a) through (b)(1)(ii)(f) as paragraphs (b)(1)(ii)(A) through (b)(1)(ii)(F), respectively.

■ g. Revising newly redesignated paragraph (b)(1)(ii)(F).

■ h. In paragraphs (b)(1)(i) and (b)(2)(i), removing “school” and adding, in its place, “educational institution”.

■ i. Redesignating paragraphs (b)(2)(ii)(a) and (b)(2)(ii)(b) as paragraphs (b)(2)(ii)(A) and (b)(2)(ii)(B), respectively.

■ j. Removing the authority citation following newly redesignated paragraph (b)(2)(ii)(A) and adding an authority citation following newly redesignated paragraph (b)(2)(ii)(B).

■ k. In newly redesignated paragraphs (b)(1)(ii)(D), (b)(2)(ii)(A), and (b)(2)(ii)(B), removing “schools” and adding, in its place, “educational institutions”.

■ l. In newly redesignated paragraph (b)(2)(ii)(B), removing “persons.” and adding, in its place, “persons, or desiring to offer licensing or certification tests to veterans or eligible persons.”

■ m. In paragraph (c)(1), removing “request for” and adding, in its place, “requests for”.

■ n. Removing the authority citation following paragraph (c)(2) and adding

an authority citation following paragraph (c)(3).

■ o. Revising paragraph (d).

■ p. In paragraph (e), redesignating paragraphs (e)(1) through (e)(3) as paragraphs (e)(1)(i) through (e)(1)(iii), respectively; designating the introductory text following the paragraph heading as paragraph (e)(1) introductory text; and designating the undesignated paragraph as paragraph (e)(2).

■ q. In newly redesignated paragraph (e)(1) introductory text, removing “when:” and adding, in its place, “when, in circumstances involving a finding of conflicting interests:”.

■ r. In newly redesignated paragraph (e)(2), removing “school” and adding, in its place, “educational institution”.

■ s. Adding an authority citation for paragraph (e).

■ t. Removing paragraph (f).

The revisions and additions read as follows:

#### § 21.4005 Conflicting interests.

For the purposes of this section, a person will be considered to be an “officer” of the State approving agency or VA when he or she has authority to exercise supervisory authority, and “educational institution” includes an organization or entity offering licensing or certification tests.

(Authority: 38 U.S.C. 3683, 3689)

(a) *A conflict of interest can cause the dismissal of a VA or State approving agency officer or employee and other adverse consequences.* (1) An officer or employee of VA will be immediately dismissed from his or her office or employment, if while such an officer or employee he or she has owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from any educational institution operated for profit—

(i) In which a veteran or eligible person was pursuing a course of education under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, 34, 35, or 36; or

(ii) Offering a licensing or certification test that is approved for payment of educational assistance under 38 U.S.C. chapter 30, 32, or 35 to veterans or eligible persons who take that test.

(2) Except as provided in paragraph (a)(3) or (c) of this section, VA will discontinue payments under § 21.4153 to a State approving agency when the Secretary finds that any individual who is an officer or employee of a State approving agency has, while he or she was such an officer or employee, owned any interest in, or received any wages, salary, dividends, profits, gratuities, or

services from any educational institution operated for profit—

(i) In which a veteran or eligible person was pursuing a course of education or training under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, 34, 35, or 36; or

(ii) Offering a licensing or certification test that is approved for payment of educational assistance under 38 U.S.C. chapter 30, 32, or 35 to veterans or eligible persons who take that test.

(3) VA will not discontinue payments to a State approving agency under paragraph (a)(2) of this section if the State approving agency, after learning that it has any officer or employee described in that paragraph, acts without delay to end the employment of that individual.

(4) If VA discontinues payments to a State approving agency pursuant to paragraph (a)(2) of this section, VA will not resume these payments while such an individual is an officer or employee of the:

(i) State approving agency;

(ii) State Department of Veterans Affairs; or

(iii) State Department of Education.

\* \* \* \* \*

(6) If a State approving agency finds that any officer or employee of VA or of the State approving agency owns an interest in, or receives wages, salary, dividends, profits, gratuities, or services from an organization or entity, operated for profit, that offers licensing or certification tests, the State approving agency:

(i) Will not approve any licensing or certification test that organization or entity offers; and

(ii) Will withdraw approval of any licensing or certification test that organization or entity offers.

\* \* \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3683, 3689)

(b) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(F) His or her position is not connected in any way with the inspection, approval, or supervision of educational institutions desiring to train veterans or eligible persons or to offer a licensing or certification test; or with the processing of claims by or making payments to veterans and eligible persons for taking an approved licensing or certification test.

(2) \* \* \*

(ii) \* \* \*

(B) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3683, 3689)

(c) \* \* \*  
(3) \* \* \*

(Authority: 38 U.S.C. 512(a), 3683)

(d) *Notice when VA does not grant a requested waiver.* When VA has denied a request for waiver of application of paragraph (a)(1) or (a)(2) of this section, VA will immediately notify the State approving agency and the educational institution:

(1) That the approval of courses or licensing and certification tests offered by the educational institution must be withdrawn;

(2) The reasons for the withdrawal of approval; and

(3) The conditions that will permit the courses or such tests to be approved again.

(Authority: 38 U.S.C. 3683, 3689(d))

(e) \* \* \*

(Authority: 38 U.S.C. 3683, 3690, 5104)

■ 9. Section 21.4008 is revised to read as follows:

**§ 21.4008 Prevention of overpayments.**

(a) *Prevention of overpayments to veterans and eligible persons enrolled in educational institutions.* When approval of a course may be withdrawn, and overpayments may exist or may be created, VA may suspend further payments to veterans and eligible persons enrolled in the educational institution offering the course until the question of withdrawing approval is resolved. See § 21.4210.

(Authority: 38 U.S.C. 3690(b))

(b) *Prevention of overpayments to veterans and eligible persons taking licensing and certification tests.* When approval of a licensing or certification test may be withdrawn, and overpayments may exist or may be created, VA may suspend payments to veterans and eligible persons taking that test until the question of withdrawing approval is resolved. See § 21.4210.

(Authority: 38 U.S.C. 3689(a), 3690(b))

■ 10. Section 21.4009 is amended by:

■ a. Revising the section heading.

■ b. Adding introductory text.

■ c. Revising paragraphs (c) and (d).

■ d. In paragraph (e), removing “A school” and adding, in its place, “An educational institution”, and removing “the school” and adding, in its place, “the educational institution”.

■ e. Adding authority citations following paragraphs (e) through (j), respectively.

■ f. In paragraph (f), removing “veteran” each place that it appears and adding, in its place, “veteran, reservist,” and removing “school” each place that it

appears and adding, in its place, “educational institution”.

■ g. In paragraphs (g) and (h), removing “the school” each place that it appears and adding, in its place, “the educational institution”.

■ h. In paragraph (g), in its heading, removing “school” and adding, in its place, “educational institution” and, in its text, removing “The school” and adding, in its place, “The educational institution”.

■ i. In paragraph (i), removing “school and” and adding, in its place, “educational institution and”.

■ j. In paragraph (j), removing “a school’s” and adding, in its place, “an educational institution’s”.

The additions and revisions read as follows:

**§ 21.4009 Waiver or recovery of overpayments.**

For the purposes of this section, “educational institution” includes an organization or entity offering licensing or certification tests.

\* \* \* \* \*

(c) *Committee on School Liability.* (1) Each VA Regional Processing Office shall have a Committee on School Liability. For the purposes of this section, the Manila Regional Office is considered the VA Regional Processing Office of jurisdiction for educational institutions located in the Philippines.

(2) The Secretary delegates to each Committee on School Liability, and to any panel that the chairperson of the Committee may designate and draw from the Committee, the authority to find whether an educational institution is liable for an overpayment.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241, 3685, 3689(d))

(d) *Initial decision.* (1) The Education Officer of the VA Regional Processing Office of jurisdiction, or the Service Center Manager when the Manila Regional Office is considered the VA Regional Processing Office of jurisdiction, will decide whether there is evidence that would warrant a finding that an educational institution is potentially liable for an overpayment.

(2) Following each finding of potential liability, the Finance Officer of the VA Regional Processing Office of jurisdiction will notify the educational institution in writing of VA’s intent to apply the liability provisions of paragraph (a) of this section. The notice will—

(i) Identify the students who were overpaid;

(ii) Identify the veterans and eligible persons who took the licensing or certification test and were overpaid;

(iii) Set out in the case of each student, or in the case of each veteran or eligible person who took the test, the educational institution’s actions or omissions which resulted in the finding that the educational institution was potentially liable for the overpayment; and

(iv) State that VA will determine liability on the basis of the evidence of record unless the VA Regional Processing Office of jurisdiction receives additional evidence or a request for a hearing within 30 days of the date the educational institution received the notice.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241, 3685, 3689(d))

(e) \* \* \*

(Authority: 38 U.S.C. 512(a), 3685, 3689)

(f) \* \* \*

(Authority: 38 U.S.C. 3685, 3689)

(g) \* \* \*

(Authority: 38 U.S.C. 512(a), 3685, 3689)

(h) \* \* \*

(Authority: 38 U.S.C. 512(a), 3685, 3689)

(i) \* \* \*

(Authority: 38 U.S.C. 512(a), 3685, 3689)

(j) \* \* \*

(Authority: 38 U.S.C. 512(a), 3685, 3689)

■ 11. Section 21.4131 is amended by:

■ a. Revising the introductory text.

■ b. Redesignating paragraph (a)(1) introductory text and paragraphs (a)(1)(i) through (a)(1)(iii) as paragraph (a)(1)(i) and paragraphs (a)(1)(i)(A) through (a)(1)(i)(C), respectively; redesignating paragraph (a)(2) introductory text and paragraphs (a)(2)(i) and (a)(2)(ii) as paragraph (a)(1)(ii) and paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B), respectively; and adding new paragraph (a)(1) introductory text and new paragraph (a)(2).

■ c. Revising the authority citation following paragraph (a).

■ d. Redesignating paragraph (d)(1) introductory text and paragraphs (d)(1)(i) through (d)(1)(iv) as paragraph (d)(1)(i) and paragraphs (d)(1)(i)(A) through (d)(1)(i)(D), respectively; redesignating paragraph (d)(2) introductory text and paragraphs (d)(2)(i) and (d)(2)(ii) as paragraph (d)(1)(ii) and paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B), respectively; and adding new paragraph (d)(1) introductory text and new paragraph (d)(2).

■ e. Revising the authority citation following paragraph (d).

The revisions and additions read as follows:

**§ 21.4131 Commencing dates.**

VA will determine under this section the commencing date of an award or increased award of educational assistance provided pursuant to subpart C or G. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable commencing dates.

(a) \* \* \*  
(1) For other than licensing or certification tests.

\* \* \* \* \*

(2) For licensing or certification tests. VA will award educational assistance for the cost of a licensing or certification test only when the veteran or servicemember takes such test—

(i) While the test is approved under 38 U.S.C. chapter 36;

(ii) While the veteran or servicemember is eligible for educational assistance under this subpart; and

(iii) No more than one year before the date VA receives a claim for reimbursement of the cost of the test.

(Authority: 38 U.S.C. 3672, 3689, 5110, 5113)

\* \* \* \* \*

(d) \* \* \*  
(1) For other than licensing or certification tests.

\* \* \* \* \*

(2) For licensing or certification tests. VA will award educational assistance for the cost of a licensing or certification test only when the veteran or servicemember takes such test—

(i) While the test is approved under 38 U.S.C. chapter 36;

(ii) While the veteran or servicemember is eligible for educational assistance under this subpart; and

(iii) No more than one year before the date VA receives a claim for reimbursement of the cost of the test.

(Authority: 38 U.S.C. 3512, 3672, 3689, 5110, 5113)

■ 12. In § 21.4146, paragraph (c) is amended by removing “institution” both places it appears, and adding, in its place, “institution (other than an organization or entity offering a licensing or certification test)”.

■ 13. Section 21.4150 is amended by:  
■ a. In the introductory text of paragraph (c), removing “will, with respect to a State, be deemed to refer to VA when that State:” and adding, in its place, “will be deemed to refer to VA:”;  
■ b. Redesignating paragraphs (c)(1) and (2) as paragraphs (c)(1)(i) and (ii), respectively.

■ c. In newly redesignated paragraph (c)(1)(ii), removing “§ 21.4153 of this part.” and adding, in its place, “§ 21.4153; and”.

■ d. Adding paragraph (c)(1) introductory text, new paragraph (c)(2), and paragraph (g).

■ e. Revising the cross reference at the end of the section.

The additions and revision read as follows:

**§ 21.4150 Designation.**

\* \* \* \* \*

(c) \* \* \*

(1) With respect to a State, when that State:

\* \* \* \* \*

(2) When VA has approval, disapproval, or suspension authority (under paragraphs (d), (e), (f), or (g) of this section, § 21.4152, or as otherwise provided by law).

\* \* \* \* \*

(g) Approval under 38 U.S.C. 3689 of a licensing or certification test offered by any agency or instrumentality of the Federal government will be under the authority of the Secretary.

(Authority: 38 U.S.C. 3689)

Cross Reference: *Course and licensing and certification test approval; jurisdiction and notices.* See § 21.4250.

■ 14. Section 21.4151 is amended by:

■ a. In paragraph (b)(3), removing the word “and”.

■ b. Redesignating paragraph (b)(4) and its authority citation as paragraph (b)(6) and revising the authority citation following newly redesignated paragraph (b)(6).

■ c. Adding new paragraph (b)(4) and paragraph (b)(5).

The additions and revision read as follows:

**§ 21.4151 Cooperation.**

\* \* \* \* \*

(b) \* \* \*

(4) Determining those licensing and certification tests that may be approved for cost reimbursement to veterans and eligible persons;

(5) Ascertaining whether an organization or entity offering an approved licensing or certification test complies at all times with the provisions of 38 U.S.C. 3689; and

\* \* \* \* \*

(Authority: 38 U.S.C. 3672, 3673, 3674, 3689)

\* \* \* \* \*

■ 15. Section 21.4152(b)(5) is amended by removing “schools or courses” both times it appears and adding, in its place, “schools, courses, or licensing or certification tests”.

■ 16. Section 21.4153 is amended by:

■ a. Adding introductory text.

■ b. Removing the authority citation following paragraph (a)(1)(ii).

■ c. Revising the authority citation following paragraph (a)(2)(ii).

The revisions and addition read as follows:

**§ 21.4153 Reimbursement of expenses.**

For the purposes of this section, other than paragraph (d)(4) of this section, “educational institution” includes an organization or entity offering licensing or certification tests.

(a) \* \* \*  
(2) \* \* \*  
(ii) \* \* \*

(Authority: 38 U.S.C. 3674, 3689)

\* \* \* \* \*

■ 17. Section 21.4154 is amended by revising the information collection approval parenthetical at the end of the section to read as follows:

**§ 21.4154 Report of activities.**

\* \* \* \* \*

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0051.)

■ 18. Section 21.4200 is amended by:

■ a. In paragraph (a)(5), removing “during the period beginning on November 2, 1994, and ending on September 30, 1996”.

■ b. Adding introductory text.

■ c. Revising paragraph (c).

■ d. Adding paragraphs (ee), (ff), (gg), (hh), and (ii).

The revision and additions read as follows:

**§ 21.4200 Definitions.**

The definitions in this section apply to this subpart, except as otherwise provided. The definitions of terms defined in this section also apply to subparts C, F, G, H, K, and L if they are not otherwise defined for purposes of those subparts.

\* \* \* \* \*

(c) *Training establishment.* The term *training establishment* means any establishment providing apprentice or other training on-the-job, including those under the supervision of a college, university, any State department of education, any State apprenticeship agency, any State board of vocational education, any joint apprenticeship committee, the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. chapter 4C, or any agency of the Federal government authorized to supervise such training.

(Authority: 38 U.S.C. 3452(e), 3501(a)(9))

\* \* \* \* \*

(ee) *Certification test.* The term *certification test* means a test an individual must pass in order to receive a certificate that provides an affirmation

of an individual's qualifications in a specified occupation.

(Authority: 38 U.S.C. 3452(b), 3501(a)(5), 3689)

(ff) *Licensing test.* The term *licensing test* means a test offered by a State, local, or Federal agency, the passing of which is a means, or part of a means, to obtain a license. That license must be required by law in order for the individual to practice an occupation in the political jurisdiction of the agency offering the test.

(Authority: 38 U.S.C. 3452(b), 3501(a)(5), 3689)

(gg) *Organization or entity offering a licensing or certification test.* (1) The term *organization or entity offering a licensing or certification test* means:

(i) An organization or entity that causes a licensing test to be given and that will issue a license to an individual who passes the test;

(ii) An organization or entity that causes a certification test to be given and that will issue a certificate to an individual who passes the test; or

(iii) An organization or entity that administers a licensing or certification test for the organization or entity that will issue a license or certificate, respectively, to the individual who passes the test, provided that the administering organization or entity can provide all required information and certifications under § 21.4268 to the State approving agency and to VA.

(2) This term does not include:

(i) An organization or entity that develops and/or proctors a licensing or certification test but does not issue the license or certificate; or

(ii) An organization or entity that administers a test but does not issue the license or certificate if that administering organization or entity cannot provide all required information and certifications under § 21.4268 to the State approving agency and to VA.

(Authority: 38 U.S.C. 3452(b), 3501(a)(5), 3689)

(hh) *Tuition assistance top-up.* The term *tuition assistance top-up* means a payment of basic educational assistance to meet all or a portion of the charges of an educational institution for the education or training of a servicemember that are not met by the Secretary of the military department concerned under 10 U.S.C. 2007(a) or (c).

(Authority: 38 U.S.C. 3014(b))

(ii) *VA Regional Processing Office.* The term *VA Regional Processing Office* means a VA office where claims for educational assistance under 38 U.S.C.

chapters 30, 32, and 35 and 10 U.S.C. chapter 1606 are allowed or disallowed.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3685, 3689)

\* \* \* \* \*

■ 19. Section 21.4206 is amended by:

■ a. In the introductory text and paragraph (a), removing "Chapter" and "Chapters" each place that they appear, and adding, in their place, "chapter" and removing "on October 31 of that" and adding, in its place, "during that calendar".

■ b. Revising paragraph (b).

The revision reads as follows:

§ 21.4206 Reporting fee.

\* \* \* \* \*

(b) In computing the reporting fee VA will not count a veteran or servicemember whose only receipt of educational assistance under 38 U.S.C. chapter 30 during a calendar year was tuition assistance top-up.

(Authority: 38 U.S.C. 3014(b), 3684(c))

\* \* \* \* \*

■ 20. Section 21.4209 is amended by:

■ a. In the introductory text of paragraph (a), removing "educational institutions" and adding, in its place, "an educational institution, including for purposes of this section an organization or entity offering a licensing or certification test,".

■ b. In paragraph (a)(1), removing "Chapter 1606 of Title 10 U.S.C. or Chapters 30, 32, 34, 35, or 36 of Title 38 U.S.C." and adding, in its place, "10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, 34, 35, or 36;".

■ c. In paragraph (a)(2), removing the period at the end of the paragraph and adding, in its place, "; and" and removing the authority citation following paragraph (a)(2).

■ d. Adding paragraph (a)(3).

■ e. In paragraph (b) introductory text, paragraph (c), and paragraph (d) introductory text, removing "will" each place that it appears and adding, in its place, "must", and removing "school" and adding, in its place, "educational institution".

■ f. In paragraph (b)(1), removing the period and adding, in its place, a semicolon, and removing "veterans" and adding, in its place, "veterans, reservists,".

■ g. In paragraph (b)(2), removing the period and adding, in its place, a semicolon, and removing "veterans" and adding, in its place, "veterans, reservists," and removing "school" and adding, in its place, "educational institution."

■ h. In paragraph (b)(3), removing "veteran's" and adding, in its place,

"veteran's, reservist's," and removing the period and adding a semicolon in its place.

■ i. In paragraph (b)(4), adding a semicolon at the end of the paragraph.

■ j. In paragraph (b)(5), removing the period and adding "; and" in its place.

■ k. Revising paragraph (b)(7).

■ l. Revising paragraph (f).

■ m. Adding an information collection approval parenthetical at the end of the section.

The additions and revisions read as follows:

§ 21.4209 Examination of records.

(a) \* \* \*

(3) The records of other individuals who took a licensing or certification test that VA believes are necessary to ascertain whether the veterans and eligible persons taking such test were reimbursed the correct amount.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3689, 3690)

(b) \* \* \*

(7) Records necessary to demonstrate compliance with the requirements of § 21.4268.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3689, 3690)

\* \* \* \* \*

(f) *Retention of records.* (1) Except as provided in paragraph (f)(2) of this section, an educational institution must keep records and accounts, including those pertaining to students not receiving benefits from VA, as described in this section, pertaining to each period of enrollment of a veteran, reservist, or eligible person. If those records are not available electronically, the paper records must be kept intact and in good condition at the educational institution for at least 3 years following the end of each enrollment period. If the records are stored electronically, the paper records may be stored at another site. The electronic records must be easily accessible at the educational institution for at least 3 years following the end of each enrollment period.

(2) An organization or entity offering a licensing or certification test must keep records and accounts intact and in good condition that are needed to show that veterans and eligible persons have been paid correctly for taking licensing or certification tests. The organization or entity must keep those records, at a site mutually agreed on, for at least 3 years following the date of the test.

(3) An educational institution will not be required under this section to retain records for longer than 3 years unless the educational institution receives from the Government Accountability Office or VA not later than 30 days before the

end of the 3-year period a written request for longer retention.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3689, 3690)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0696.)

■ 21. Section 21.4210 is amended by:

■ a. Revising the section heading, the heading of paragraph (a), and paragraphs (a)(1) and (a)(2)(ii).

■ b. In paragraph (b), designating the introductory text following the paragraph heading as paragraph (b)(1) introductory text; redesignating paragraphs (b)(1) and (b)(2) as paragraphs (b)(1)(i) and (b)(1)(ii), respectively; and adding a new paragraph (b)(2) immediately after the authority citation following paragraph (b)(1)(ii).

■ c. Revising the authority citation following paragraph (c) and revising paragraph (d)(1) introductory text.

■ d. Redesignating paragraphs (d)(1)(i), (d)(1)(ii), (d)(2), and (d)(3) as paragraphs (d)(2)(i), (d)(2)(ii), (d)(3), and (d)(4), respectively.

■ e. Adding new paragraphs (d)(1)(i) and (d)(1)(ii); paragraph (d)(1)(iii); and a new paragraph (d)(2) introductory text.

■ f. In newly redesignated paragraph (d)(2)(i), removing “and 21.4264” and adding, in its place, “21.4264, and 21.4268”.

■ g. Revising the authority citation following paragraph (d).

■ h. In paragraphs (e)(1) and (f), removing “facility” each place that it appears and adding, in its place, “Regional Processing Office”.

■ i. Immediately after the authority citation following paragraph (e)(2), adding paragraph (e)(3).

■ j. Revising paragraph (g).

■ k. In paragraph (h)(1), removing “course or courses” and adding, in its place, “course(s) or test(s)”, and removing “facility” and adding, in its place, “Regional Processing Office”.

■ l. Adding paragraph (i).

The revisions and additions read as follows:

**§ 21.4210 Suspension, discontinuance, and denial of educational assistance payments, and disapproval of enrollments or reenrollments for pursuit of approved courses.**

(a) *Overview; explanation of terms used in §§ 21.4210 through 21.4216.* (1) VA may pay educational assistance to a reservist under 10 U.S.C. chapter 1606 for the reservist's pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36. VA may pay educational assistance under 38 U.S.C. chapter 32 or 35 to a veteran

or eligible person for the individual's pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36 or if the individual has taken a licensing or certification test approved in accordance with the provisions of 38 U.S.C. chapter 36. VA may pay educational assistance under 38 U.S.C. chapter 30 to a veteran or servicemember for the individual's pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36; if the individual has taken a licensing or certification test approved in accordance with the provisions of 38 U.S.C. chapter 36; or if the individual is entitled to be paid benefits (tuition assistance top-up) to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance. Except for tuition assistance top-up, where courses do not need to be approved, a State approving agency designated by VA, or in some instances VA, approves the course or test for payment purposes. Notwithstanding such approval, VA, as provided in paragraphs (b), (c), and (d) of this section, may suspend, discontinue, or deny payment of benefits to any or all otherwise eligible individuals for pursuit of a course or training approved under 38 U.S.C. chapter 36, and for taking a licensing or certification test approved under 38 U.S.C. chapter 36.

(2) \* \* \*

(ii) The term “educational institution” includes a training establishment, or organization or entity offering a licensing or certification test; and

\* \* \* \* \*

(b) \* \* \*

(2) VA may deny payment of educational assistance to a specific individual for taking a licensing or certification test if, following an examination of the individual's case, VA has credible evidence affecting that individual that—

(i) The test fails to meet any of the requirements of 38 U.S.C. 3689; or

(ii) The organization or entity offering the individual's test has violated any of the requirements of 38 U.S.C. 3689.

(Authority: 38 U.S.C. 3689)

(c) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689, 3690)

(d) \* \* \*

(1) The Director of the VA Regional Processing Office of jurisdiction may:

(i) Suspend payments of educational assistance to all veterans, servicemembers, reservists, or eligible persons already enrolled in a course;

(ii) Disapprove all further enrollments or reenrollments of individuals seeking VA educational assistance for pursuit of the course (except for enrollments and reenrollments of servicemembers seeking to be paid benefits (tuition assistance top-up) to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance); and

(iii) Suspend payments of educational assistance to all veterans, servicemembers, or eligible persons who may take a licensing or certification test after a date that the Director may determine.

(2) Except as provided in paragraphs (d)(3) and (i) of this section, the decision to act as described in paragraph (d)(1) of this section must be based on evidence of a substantial pattern of veterans, servicemembers, reservists, or eligible persons enrolled in the course or taking the test receiving educational assistance to which they are not entitled because:

\* \* \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3680A(d), 3684, 3685, 3689, 3690, 3696, 5301)

(e) \* \* \*

(3) If VA receives a claim for educational assistance for the taking by an individual of a licensing or certification test, and the individual took the licensing or certification test during a period when payment for taking such test was suspended, the Director will inform the individual in writing of the fact of the suspension and the reasons why payments were suspended.

(Authority: 38 U.S.C. 3689, 3690)

\* \* \* \* \*

(g) *Referral to the Committee on Educational Allowances.* The Director of the VA Regional Processing Office of jurisdiction will refer the following matters to the Committee on Educational Allowances as provided in § 21.4212:

(1) A suspension under paragraph (d) of this section of payments of educational assistance to all veterans, servicemembers, reservists, or eligible persons already enrolled in a course;

(2) A disapproval under paragraph (d) of this section of all further enrollments or reenrollments of individuals seeking VA educational assistance for pursuit of the course (except for enrollments and reenrollments of servicemembers seeking to be paid tuition assistance top-up benefits to meet all or a portion of an educational institution's charges for education or training that the military

department concerned has not covered under tuition assistance); and

(3) A suspension under paragraph (d) of this section of payments of educational assistance to all veterans, servicemembers, or eligible persons who may take a licensing or certification test after a date that the Director has determined.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689, 3690)

\* \* \* \* \*

(i) *This section does not apply to disapproval of courses based on conflicts of interests.* VA will disapprove courses when required by § 21.4005(d) without applying the provisions of paragraphs (a) through (h) of this section.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3034(a), 3241, 3683(b))

■ 22. Section 21.4211 is amended by:

■ a. Redesignating paragraph (b)(2) and the authority citation following paragraph (b)(2) as paragraph (b)(3).

■ b. Revising the section heading, paragraphs (a) and (b)(1), and the authority citations following paragraphs (b), (c), (d), and (e).

■ c. Adding a new paragraph (b)(2).

■ d. In paragraphs (d), (e)(1), and (e)(2)(iii), removing “facility” each place that it appears and adding, in its place, “Regional Processing Office”.

The revisions and addition read as follows:

**§ 21.4211 Composition, jurisdiction, and duties of Committee on Educational Allowances.**

(a) *Authority.* (1) 38 U.S.C. 3690 authorizes VA to discontinue educational benefits to veterans, servicemembers, reservists, or eligible persons when VA finds that:

(i) The program of education or course in which such individuals are enrolled fails to meet a requirement of 38 U.S.C. chapter 30, 32, 34, 35, or 36, or 10 U.S.C. chapter 1606, or the regulations in this part; or

(ii) An educational institution has violated any such statute or regulation, or fails to meet such a statutory or regulatory requirement.

(2) This authority does not extend to enrollments and reenrollments of individuals seeking to be paid tuition assistance top-up benefits to meet all or a portion of an educational institution’s charges for education or training that the military department concerned has not covered under tuition assistance.

(3) 38 U.S.C. 3689 and 3690 further authorize VA to deny payment to servicemembers or veterans for licensing or certification tests when VA finds that either the test or the

organization or entity offering the test fails to meet a requirement of 38 U.S.C. 3689 or the applicable regulations of this part.

(4) Sections 21.4210 through 21.4216 implement the authority discussed in paragraphs (a)(1) and (a)(3) of this section.

(5) Each VA Regional Processing Office shall have a Committee on Educational Allowances. For the purposes of this section, the Manila Regional Office is considered the VA Regional Processing Office of jurisdiction for educational institutions located in the Philippines. The Committee’s findings of fact and recommendations will be provided to the Director of the VA Regional Processing Office.

(6) The Secretary of Veterans Affairs delegates to each Director of a VA Regional Processing Office the authority to suspend or discontinue payment of educational benefits, to disapprove enrollments or reenrollments, or to deny payment of benefits for tests.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a); 3034(a), 3241(a), 3689(d), 3690)

(b) \* \* \*

(1) The Committee on Educational Allowances is established to assist the Director of the VA Regional Processing Office of jurisdiction in deciding in a specific case whether—

(i) Educational assistance should be discontinued to all individuals enrolled in any course or courses an educational institution offers; and

(ii) If appropriate, whether approval of all further enrollments or reenrollments in the course or courses an educational institution offers should be denied to veterans, servicemembers, reservists, or other eligible persons pursuing those courses under programs VA administers; or

(iii) Payment should be denied to all servicemembers and veterans for taking a specific licensing or certification test.

(2) A Director’s decision described in paragraph (b)(1) of this section must be based on a finding that the educational institution is not meeting, or has violated, a requirement of 38 U.S.C. chapter 30, 32, 34, 35, or 36, or 10 U.S.C. chapter 1606, or the regulations in this part.

\* \* \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(c) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(d) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(e) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

■ 23. Section 21.4212 is amended by:

■ a. In paragraph (a)(5), removing “discontinued and approval of new enrollments or reenrollments denied.” and adding, in its place, “discontinued; approval of new enrollments should be denied; and/or payment to individuals for licensing or certification tests should be denied, as appropriate.”

■ b. Revising the authority citation.

■ c. In paragraphs (a) introductory text and (b)(1)(iii), removing “facility” each place that it appears and adding, in its place, “Regional Processing Office”.

The revision reads as follows:

**§ 21.4212 Referral to Committee on Educational Allowances.**

\* \* \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

■ 24. In § 21.4213, the authority citation is revised to read as follows:

**§ 21.4213 Notice of hearing by Committee on Educational Allowances.**

\* \* \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

■ 25. Section 21.4214 is amended in paragraphs (b), (e), (k), (o), and (p) by removing “facility” each place that it appears and adding, in its place, “Regional Processing Office”, and by revising the authority citations for paragraphs (a) through (p) to read as follows:

**§ 21.4214 Hearing rules and procedures for Committee on Educational Allowances.**

(a) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(b) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(c) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(d) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(e) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(f) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(g) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(h) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(i) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(j) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(k) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(l) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(m) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(n) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(o) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(p) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

■ 26. Section 21.4215 is amended in paragraphs (b)(1) introductory text, (c), (d), (e)(1), (e)(2) introductory text, and (e)(3) by removing “facility” each place that it appears and adding, in its place, “Regional Processing Office”, and by revising the section heading, paragraph (a), and the authority citations for paragraphs (b), (c), (d), and (e) to read as follows:

**§ 21.4215 Decision of Director of VA Regional Processing Office of jurisdiction.**

(a) *Decision.* The Director of the VA Regional Processing Office of jurisdiction will render a written decision on the issue or issues of discontinuance or denial that were the subject of the Committee on Educational Allowances proceedings.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(b) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(c) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(d) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(e) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

■ 27. Section 21.4216 is amended in paragraph (c) by removing “facility” and adding, in its place, “Regional Processing Office”, and by revising the section heading, paragraph (a), and the authority citation at the end of paragraph (c) to read as follows:

**§ 21.4216 Review of decision of Director of VA Regional Processing Office of jurisdiction.**

(a) *Decision is subject to review by the Director, Education Service.* At the request of the educational institution the Director, Education Service will review a decision of a Director of a VA Regional Processing Office of jurisdiction to discontinue payments; to disapprove new enrollments or reenrollments; or to deny payment of benefits for licensing or certification tests. This review will be based on the evidence of record when the Director of the VA Regional Processing Office of jurisdiction made that decision. It will not be *de novo* in nature and no hearing on the issue will be held. When reviewing a decision to deny payment for licensing or certification tests, the Director, Education Service may seek the advice of the Professional Certification and Licensure Advisory Committee established under 38 U.S.C. 3689(e).

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), (e), 3690)

\* \* \* \* \*

(c) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

■ 28. Section 21.4234 is amended by:

■ a. In paragraph (a)(1), removing “educational professional” and adding, in its place, “educational, professional,”.

■ b. In paragraph (a)(2) introductory text, removing the period and adding a colon in its place.

■ c. In paragraph (a)(2)(i), removing the period and adding a semicolon in its place.

■ d. In paragraph (a)(2)(ii), removing the comma at the end of the paragraph and adding a semicolon in its place.

■ e. In paragraph (a)(2)(iii), removing “program, or” and adding, in its place, “program;”.

■ f. In paragraph (a)(2)(iv), removing the period and adding “; or”.

■ g. Adding paragraph (a)(2)(v), an authority citation following paragraph (e), and an information collection approval parenthetical at the end of the section.

The additions read as follows:

**§ 21.4234 Change of program.**

(a) \* \* \*

(2) \* \* \*

(v) An enrollment or reenrollment of a servicemember seeking to be paid tuition assistance top-up benefits to meet all or a portion of an educational institution’s charges for education or training that the military department concerned has not covered under tuition assistance.

(Authority: 38 U.S.C. 3691)

\* \* \* \* \*

(e) \* \* \*

(Authority: 38 U.S.C. 3691)

\* \* \* \* \*

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0074 and 2900–0099.)

■ 29. Section 21.4250 is amended by:

■ a. Revising the section heading and paragraphs (a) and (b)(1).

■ b. In paragraph (b)(2), removing “course” and adding, in its place, “course or licensing or certification test”.

■ c. Removing the authority citation following paragraph (c)(2)(ii).

■ d. In paragraph (c)(2)(iv), removing “36; and” and adding, in its place, “36;”.

■ e. In paragraph (c)(2)(v), removing the period and adding “; and” in its place.

■ f. Removing the authority citation at the end of paragraph (c)(2)(v).

■ g. Immediately after paragraph (c)(2)(v), adding paragraph (c)(2)(vi).

■ h. Revising the cross reference at the end of the section.

■ i. Immediately following the cross reference at the end of the section, adding an information collection approval parenthetical.

The revisions and addition read as follows:

**§ 21.4250 Course and licensing and certification test approval; jurisdiction and notices.**

(a) *General.* The statements made in this paragraph are subject to exceptions found in paragraph (c) of this section.

(1) If an educational institution offers a resident course in a State, only the State approving agency for the State where the course is being offered may approve the course for VA training. If the State approving agency chooses to approve a resident course (other than a flight course) not leading to a standard college degree, it must also approve the class schedules of that course.

(2) If an educational institution with a main campus in a State offers a resident course not located in a State, only the State approving agency for the State where the educational institution’s main campus is located may approve the course for VA training. If the State

approving agency chooses to approve a resident course (other than a flight course) not leading to a standard college degree, it must also approve the class schedules of that course.

(3) If an educational institution offers a course by independent study or by correspondence, only the State approving agency for the State where the educational institution's main campus is located may approve the course for VA training.

(4) If a training establishment offers a program of apprenticeship or other on-job training, only the State approving agency for the State where the training will take place may approve the course for VA training.

(5) Except as provided in paragraph (a)(6)(ii) of this section, if a State or political subdivision of a State offers a licensing test, only the State approving agency for the State where the license will be valid may approve the test for VA payment.

(6)(i) If an organization or entity offers a licensing or certification test and applies for approval of that test, only the State approving agency for the State where the organization or entity has its headquarters may approve the test and the organization or entity offering the test for VA payment. This approval will be valid wherever the test is given.

(ii) If the organization or entity offering a licensing or certification test does not apply for approval, and a State or political subdivision of a State requires that an individual take the test in order to obtain a license, the State approving agency for the State where the license will be valid may approve the test for VA payment. This approval will be valid for the purpose of VA payment only if the veteran takes the test in the State or political subdivision of the State where the license is valid.

(7) A course approved under 38 U.S.C. chapter 36 will be deemed to be approved for purposes of 38 U.S.C. chapter 35.

(8) Any course that was approved under 38 U.S.C. chapter 33 (as in effect before February 1, 1965), or under 38 U.S.C. chapter 35 before March 3, 1966, and was not or is not disapproved for failure to meet any of the requirements of the applicable chapters, will be deemed to be approved for purposes of 38 U.S.C. chapter 36.

(9) VA may make tuition assistance top-up payments of educational assistance to an individual to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance, even though a State approving agency has not approved the

course in which the individual was enrolled.

(Authority: 38 U.S.C. 3014(b), 3670, 3672(a))

(b) \* \* \*

(1) *Notice of approval.* (i) Each State approving agency must provide to VA:

(A) A list of schools specifying which courses it has approved;

(B) A list of licensing and certification tests and organizations and entities offering these tests that it has approved; and

(C) Any other information that it and VA may determine to be necessary.

(ii) The lists and information must be provided on paper or electronically as VA may require.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(vi) Any licensing or certification test and any organization or entity offering such a test if—

(A) The organization or entity is an agency of the Federal government;

(B) The headquarters of the organization or entity offering the test is not located in a State; or

(C) The State approving agency that would, under paragraph (a)(5) or (a)(6) of this section, have approval jurisdiction for the test has declined to perform the approval function for licensing or certification tests and the organizations or entities offering these tests.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3476, 3523, 3672, 3673, 3689) Cross Reference: *Designation.* See § 21.4150. (The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0051.)

■ 30. Section 21.4251 is amended by adding introductory text to read as follows:

**§ 21.4251 Minimum period of operation requirement for educational institutions.**

The provisions of this section do not apply to licensing or certification tests or to the organizations or entities offering those tests. For information on the minimum period of operation requirement that applies to licensing or certification tests, see § 21.4268.

\* \* \* \* \*

■ 31. Section 21.4252 is amended by:

- a. Revising the section heading.
- b. Revising the heading of paragraph (h) and adding introductory text.
- c. Revising paragraph (h)(1).
- d. Redesignating paragraph (h)(2) as paragraph (h)(3) and revising the introductory text.
- e. Adding new paragraph (h)(2).
- f. Revising the authority citation following paragraph (h)(3).

■ g. Adding an information collection approval parenthetical at the end of the section.

The revisions and additions read as follows:

**§ 21.4252 Courses precluded; erroneous, deceptive, or misleading practices.**

\* \* \* \* \*

(h) *Erroneous, deceptive, or misleading practices.* For the purposes of this paragraph, “educational institution” includes an organization or entity offering licensing or certification tests.

(1) If an educational institution uses advertising, sales, enrollment practices, or candidate handbooks that are erroneous, deceptive, or misleading by actual statement, omission, or intimation, VA will not approve:

- (i) An enrollment in any course such an educational institution offers; and
- (ii) Payment of educational assistance as reimbursement to a veteran or eligible person for taking a licensing or certification test that the educational institution offers.

(2) VA will use the services and facilities of the Federal Trade Commission, where appropriate, under an agreement:

- (i) To carry out investigations; and
- (ii) To decide whether an educational institution uses advertising, sales, or enrollment practices, or candidate handbooks, described in paragraph (h)(1) of this section.

(3) Any educational institution offering courses approved for the enrollment of veterans, reservists, and/or eligible persons, or offering licensing or certification tests approved for payment of educational assistance as reimbursement to veterans or eligible persons who take the tests, must maintain a complete record of all advertising, sales materials, enrollment materials, or candidate handbooks (and copies of each) that the educational institution or its agents have used during the preceding 12-month period. The State approving agency and VA may inspect this record. The materials in this record shall include but are not limited to:

\* \* \* \* \*

(Authority: 38 U.S.C. 3689, 3696)

\* \* \* \* \*

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900-0073, 2900-0156, and 2900-0682.)

■ 32. Section 21.4258 is amended by:

- a. Revising paragraphs (a) and (b).
- b. Removing paragraph (c).
- c. Redesignating paragraph (d) as new paragraph (c).

■ d. In newly redesignated paragraph (c)(2)(ii), removing “paragraph (d)(1)” and adding, in its place, “paragraph (c)(1)”

■ e. In newly redesignated paragraph (c)(3), removing “paragraph (d)(2)” and adding, in its place, “paragraph (c)(2)”.

■ f. At the end of the section, revising the authority citation and adding an information collection approval parenthetical.

The revisions and addition read as follows:

**§ 21.4258 Notice of approval.**

(a) *General; letter of approval and other notice of approval requirements.* The State approving agency, upon determining that an educational institution, training establishment, or organization or entity offering a licensing or certification test has complied with all the requirements for approval will—

(1) Notify by letter, as described in paragraph (b) of this section, each such educational institution, training establishment, or organization or entity offering a licensing or certification test; and

(2) Furnish VA an official copy of the letter, any attachments, and any subsequent amendments. In addition, the State approving agency will furnish VA a copy of each such—

(i) Educational institution’s approved catalog or bulletin;

(ii) Training establishment’s application requesting approval; or

(iii) Organization’s or entity’s candidate handbook.

(b) *Contents of letter of approval.* The letter of approval will include the following:

(1) For an educational institution: (i) Date of the letter and effective date of approval of courses;

(ii) Proper address and name of the educational institution;

(iii) Authority for approval and conditions of approval, referring specifically to the approved catalog or bulletin;

(iv) Name of each course approved, except that a State approving agency, in lieu of listing the name of each course approved at an institution of higher learning, may identify approved courses by reference to page numbers in the school catalog or bulletin;

(v) Where applicable, enrollment limitations, such as maximum number of students authorized and student-teacher ratio;

(vi) Signature of responsible official of State approving agency; and

(vii) Such other fair and reasonable provisions as are considered necessary by the appropriate State approving agency.

(2) For a training establishment: (i) Date of the letter and effective date of approval of the apprentice or other on-the-job training;

(ii) Proper address and name of the training establishment;

(iii) Authority for approval and conditions of approval;

(iv) Name of the approved program of apprenticeship or other on-the-job training;

(v) Where applicable, enrollment limitations, such as maximum number of trainees authorized;

(vi) Such other fair and reasonable provisions as are considered necessary by the appropriate State approving agency; and

(vii) Signature of responsible official of State approving agency.

(3) For an organization or entity offering a licensing or certification test:

(i) Date of the letter and effective date of approval of test(s);

(ii) Proper name of the organization or entity offering the licensing or certification test(s);

(iii) Name of each test approved indicating whether it is a licensing test or certification test;

(iv) Where applicable, enrollment limitations such as maximum numbers authorized and test taker-test proctor ratio; and

(v) Signature of responsible official of State approving agency.

(Authority: 38 U.S.C. 3672, 3678, 3689)

\* \* \* \* \*

(20 U.S.C. 1681 *et seq.*; 29 U.S.C. 794; 38 U.S.C. 501, 3671; 42 U.S.C. 2000d, 6101 *et seq.*; 38 CFR parts 18, 18a, 18b)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0051.)

■ 33. Section 21.4259 is amended by:

■ a. In paragraph (a) introductory text, removing “course” and adding, in its place, “course or licensing or certification test”.

■ b. In paragraph (a)(1), removing “approval of the course for new enrollments” and adding, in its place, “approval of a course for new enrollments, or approval of a licensing or certification test.”; and removing “course fails” and adding, in its place, “course or licensing or certification test fails”.

■ c. In paragraph (a)(2), removing “course” and adding, in its place, “course or licensing or certification test”.

■ d. In paragraph (a)(3), removing “school” and adding, in its place, “educational institution”.

■ e. Revising paragraph (b).

■ f. In paragraph (c), removing “courses” and adding, in its place,

“courses or licensing or certification tests”.

■ g. In paragraph (d), removing “Chapter 31.” and adding, in its place, “38 U.S.C. chapter 31.”.

■ h. At the end of the section, revising the authority citation and adding an information collection approval parenthetical.

The revisions and additions read as follows:

**§ 21.4259 Suspension or disapproval.**

\* \* \* \* \*

(b) Each State approving agency will immediately notify VA of each course, or licensing or certification test, that it has suspended or disapproved.

\* \* \* \* \*

(Authority: 38 U.S.C. 3679, 3689)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0051.)

■ 34. Section 21.4266 is amended by revising the cross reference at the end of the section to read as follows:

**§ 21.4266 Courses offered at subsidiary branches or extensions.**

\* \* \* \* \*

Cross Reference: *Minimum period of operation requirement for educational institutions.* See § 21.4251.

■ 35. Section 21.4268 is added to read as follows:

**§ 21.4268 Approval of licensing and certification tests.**

(a) *Authority to approve licensing and certification tests.* (1) Except for approval of the licensing and certification tests and the organizations or entities offering these tests that, as provided in § 21.4250(c)(2), are VA’s responsibility, the Secretary of Veterans Affairs delegates to each State approving agency the authority, within the respective State approving agency’s jurisdiction provided in § 21.4250(a), to approve licensing and certification tests and to approve the organizations or entities offering licensing and certification tests.

(2) The Secretary of Veterans Affairs delegates to the Under Secretary for Benefits, and to personnel the Under Secretary for Benefits may designate within the Education Service of the Veterans Benefits Administration, the authority to approve the licensing and certification tests and the organizations or entities offering these tests that, as provided in § 21.4250(c)(2)(vi), are VA’s responsibility.

(Authority: 38 U.S.C. 512(a), 3689(a)(2))

(b) *Approval of tests.* (1) If an organization or entity wants a licensing or certification test that it offers to be approved for payment of educational assistance, it must apply for approval to the State approving agency having jurisdiction over the locality where the organization or entity has its headquarters. The application must be in the form the State approving agency requires.

(2) In order to be approved for payment of educational assistance to veterans and eligible persons, a licensing or certification test must meet the requirements of paragraph (b) of this section, and the organization or entity offering the test must meet the requirements of paragraph (c) of this section and, if appropriate, the requirements of paragraph (d) of this section.

(i) The State approving agency may approve a licensing or certification test only if—

(A) The test is required under Federal, State, or local law or regulation for an individual to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession; or

(B) The State approving agency decides that the test is generally accepted, in accordance with relevant government, business, or industry standards, employment policies, or hiring practices, as attesting to a level of knowledge or skill required to qualify to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession.

(ii) If a State or political subdivision of a State offers a licensing or certification test, the State approving agency will deem the test to have met the requirements of paragraph (b) of this section.

(3) In considering whether the test is generally accepted, a State approving agency may consider the following:

(i) The nature and number of the entities that recognize the certificate awarded to candidates who pass the test;

(ii) The degree to which employers in the relevant industry accept the certification test;

(iii) Whether major employers in an industry require that their employees obtain the certificate awarded to candidates who pass the test;

(iv) The percentage of people employed in the vocation or profession who have taken the test and obtained the certificate; or

(v) Any other reasonable criterion that the State approving agency believes will clarify whether the test is generally accepted.

(4) Generally, if a State approving agency approves a certification test, VA will consider that the test is approved for any veteran or eligible person even if he or she takes the test at a location outside the State where the organization or entity offering the test has its headquarters. However, a certification test approval is valid only in the State where the State approving agency has jurisdiction if—

(i) A State licensing agency recognizes the certification test as meeting a requirement for a license and has sought approval for that test; and

(ii) The State approving agency for the State where the licensing agency is located approves that test.

(Authority: 38 U.S.C. 3689)

(c) *Approval of organizations or entities offering licensing or certification tests.* An organization or entity must meet the requirements of this paragraph and, if a nongovernmental organization, of paragraph (d) of this section, in order for the State approving agency to approve a licensing or certification test that the organization or entity offers for payment of educational assistance to veterans and eligible persons who take the test. The organization or entity must—

(1) Maintain appropriate records with respect to all candidates who take the test for a period of not less than three years from the date the organization or entity administers the test to the candidates;

(2) Promptly issue notice of the results of the test to the candidate for the license or certificate;

(3) Have a process to review complaints submitted against the organization or entity with respect to the test or the process for obtaining a license or certificate required for a vocation or profession;

(4) Give to the State approving agency the following information:

(i) A description of the licensing or certification test that the organization or entity offers, including the purpose of the test, the vocational, professional, governmental, and other entities that recognize the test, and the license or certificate issued upon passing the test;

(ii) The requirements to take the test, including the amount of the fee charged for the test and any prerequisite education, training, skills, or other certification; and

(iii) The period for which the license or certificate is awarded is valid, and the requirements for maintaining or renewing the license or certificate; and

(5) Agree to give the following information to VA at VA's request:

(i) The amount of the fee a candidate pays to take a test;

(ii) The results of any test a candidate takes; and

(iii) Personal identifying information of any candidate who applies for reimbursement from VA for a test.

(Authority: 38 U.S.C. 3689(c))

(d) *Approval of nongovernmental organizations or entities offering certification tests.* (1) In addition to complying with the requirements of paragraph (c) of this section, a nongovernmental organization or entity must meet the requirements of paragraph (d) of this section before a certification test it offers can be approved for payment of educational assistance to veterans and eligible persons who take the test. Except as provided in paragraphs (d)(3) and (d)(4) of this section, the organization or entity—

(i) Certifies to the State approving agency that the licensing or certification test offered by the organization or entity is generally accepted, in accordance with relevant government, business, or industry standards, employment policies, or hiring practices, as attesting to a level of knowledge or skill required to qualify to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession;

(ii) Is licensed, chartered, or incorporated in a State and has offered the test for a minimum of two years before the date on which the organization or entity first submits to the State approving agency an application for approval under this section;

(iii) Employs, or consults with, individuals with expertise or substantial experience with respect to all areas of knowledge or skill that are measured by the test and that are required for the license or certificate issued; and

(iv) Has no direct financial interest in—

(A) The outcome of the test; or

(B) An organization that provides the education or training of candidates for licenses or certificates required for a vocation or profession.

(2) At the request of the State approving agency, the organization or entity seeking approval for a licensing or certification test must give such information to the State approving agency as the State approving agency decides is necessary to perform an assessment of—

(i) The test the organization or entity conducts as compared to the level of knowledge or skills that a license or certificate attests; and

(ii) The applicability of the test over such periods of time as the State

approving agency decides is appropriate.

(3) The provisions of paragraph (d)(1)(ii) of this section will not prevent the approval of a test if the organization or entity has offered a reasonably related test for at least two years.

(4) The provisions of paragraph (d)(1)(iv) of this section will not prevent the approval of a test if the organization or entity—

(i) Offers a sample test or preparatory materials to a candidate for the test but does not otherwise provide preparatory education or training to the candidate; or

(ii) Has a financial interest in an organization that provides preparatory education or training of a candidate for a test, but that test is advantageous in but not required for practicing a vocation or profession.

(Authority: 38 U.S.C. 3689(c))

(e) *Notice of approval and withdrawal of approval.* The State approving agency must provide notice of an approval of a test as required in § 21.4250(b). If the State approving agency wishes to withdraw approval of a test, it must follow the provisions of § 21.4259.

(Authority: 38 U.S.C. 3689(d))

(f) *A decision to disapprove a test or an organization or entity offering a test may be reviewed.* (1) If an organization or entity offering a test disagrees with a State approving agency's decision to disapprove a test or to disapprove the organization or entity offering the test, it may seek a review of the decision from the Director, Education Service. If the Director, Education Service has acted as the State approving agency, the organization or entity may seek a review of the decision from the Under Secretary for Benefits.

(2) The organization or entity must make its request for a review in writing to the State approving agency. The State approving agency must receive the request within 90 days of the date of the notice to the organization or entity that the test or the organization or entity is disapproved.

(3) The review will be based on the evidence of record at the time the State approving agency made its initial decision. It will not be *de novo* in character.

(4) The Director, Education Service or the Under Secretary for Benefits may seek the advice of the Professional Certification and Licensure Advisory Committee, established under 38 U.S.C. 3689(e), as to whether the State approving agency's decision should be reversed.

(5) The decision of the Director, Education Service or the Under

Secretary for Benefits is the final administrative decision. It will not be subject to further administrative review.

(Authority: 38 U.S.C. 3689)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0697.)

■ 36. In § 21.4272, paragraph (a)(5)(iii) is amended by removing “§ 21.4252(1), (2) or (3).” and adding, in its place, “§ 21.4252(l)(1), (2), or (3).”.

### Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

■ 37. The authority citation for part 21, subpart G is revised to read as follows:

**Authority:** 38 U.S.C. 501(a), chs. 32, 36, and as noted in specific sections.

■ 38. Section 21.5021 is amended by:

■ a. Revising the introductory text and paragraphs (k) and (p).

■ b. In paragraph (q)(3), removing “636; or” and adding, in its place, “636;”.

■ c. In paragraph (q)(4), removing “on-job training approved as provided in §§ 21.4261 or 21.4262 of this part as appropriate.” and adding, in its place, “training on-the-job approved as provided in § 21.4261 or § 21.4262 as appropriate; or”.

■ d. Adding paragraph (q)(5) immediately before the authority citation for paragraph (q).

■ e. Revising the authority citation for paragraph (q).

■ f. Adding paragraphs (z), (aa), and (bb).

The revisions and additions read as follows:

#### § 21.5021 Definitions.

For the purposes of subpart G and payment of benefits under 38 U.S.C. chapter 32, the following definitions apply (see also §§ 21.1029 and 21.4200):

(k) *Benefit payment.* The term *benefit payment* means any educational assistance allowance paid under 38 U.S.C. chapter 32 to a veteran for pursuit of a program of education during a benefit period.

(Authority: 38 U.S.C. 3231, 3232, 3452(b), 3689)

(p) *Training establishment.* The term *training establishment* means any establishment providing apprentice or other training on-the-job, including those under the supervision of a college, university, any State department of education, any State apprenticeship agency, any State board of vocational education, any joint apprenticeship

committee, the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. chapter 4C, or any agency of the Federal government authorized to supervise such training.

(Authority: 38 U.S.C. 3202, 3452(e))

(q) \* \* \*

(5) A licensing or certification test, the passing of which demonstrates an individual's possession of the knowledge or skill required to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession, provided that VA or a State approving agency has approved the test and the licensing or credentialing organization or entity that offers the test as provided in 38 U.S.C. 3689.

(Authority: 38 U.S.C. 3202(2), 3452(b), 3689)

\* \* \* \* \*

(z) *Certification test.* The term *certification test* means a test an individual must pass in order to receive a certificate that provides an affirmation of an individual's qualifications in a specified occupation.

(Authority: 38 U.S.C. 3202, 3452(b), 3501(a)(5), 3689)

(aa) *Licensing test.* The term *licensing test* means a test offered by a State, local, or Federal agency, the passing of which is a means, or part of a means, to obtain a license. That license must be required by law in order for the individual to practice an occupation in the political jurisdiction of the agency offering the test.

(Authority: 38 U.S.C. 3202, 3452(b), 3689)

(bb) *Organization or entity offering a licensing or certification test.* (1) The term *organization or entity offering a licensing or certification test* means:

(i) An organization or entity that causes a licensing test to be given and that will issue a license to an individual who passes the test;

(ii) An organization or entity that causes a certification test to be given and that will issue a certificate to an individual who passes the test; or

(iii) An organization or entity that administers a licensing or certification test for the organization or entity that will issue a license or certificate, respectively, to an individual who passes the test, provided that the administering organization or entity can provide all required information and certifications under § 21.4268 to the State approving agency and to VA.

(2) This term does not include:

(i) An organization or entity that develops and/or proctors a licensing or certification test, but does not issue the license or certificate;

(ii) An organization or entity that administers a test but does not issue the license or certificate, if that administering organization or entity cannot provide all required information and certifications under § 21.4268 to the State approving agency and to VA.

(Authority: 38 U.S.C. 3202, 3452(b), 3689)

■ 39. Section 21.5131 is revised to read as follows:

**§ 21.5131 Educational assistance allowance.**

(a) *General.* Statements in this section concerning payments of educational assistance allowance assume that the veteran or servicemember:

- (1) Is eligible for educational assistance under 38 U.S.C. chapter 32;
- (2) Has remaining entitlement; and
- (3) Has not passed the 10-year delimiting date and any applicable extension to that date.

(Authority: 38 U.S.C. 3241)

(b) *Payment of educational assistance allowance for pursuit of programs of education and other courses.* (1) VA will pay educational assistance allowance at the rate specified in § 21.5136 or § 21.5138 while the veteran or servicemember is pursuing:

- (i) An approved program of education;
- (ii) A refresher or deficiency course;

or  
(iii) Special education or training which is necessary to enable the veteran or servicemember to pursue an approved program of education.

(2) Except as provided in paragraph (c) of this section, VA will not pay educational assistance allowance for pursuit of any course unless the course is:

- (i) Part of the veteran's or servicemember's program of education;
- (ii) A refresher or deficiency course;

or  
(iii) Special education or training which is necessary to enable the veteran or servicemember to pursue an approved program of education.

(3) VA may withhold a payment until it receives verification or certification of the veteran's or servicemember's continued enrollment and adjusts accordingly the veteran's or servicemember's account.

(Authority: 38 U.S.C. 3241)

(c) *Payment for taking a licensing or certification test.* VA will pay educational assistance allowance to an eligible veteran or servicemember who takes an approved licensing or certification test and applies, in accordance with the provisions of § 21.1030(b), for that assistance. VA will not pay educational assistance for a

licensing or certification test that neither a State approving agency nor VA has approved.

(Authority: 38 U.S.C. 3689)

■ 40. Section 21.5133 is amended by revising the introductory text, paragraph (a) introductory text, and authority citation to read as follows:

**§ 21.5133 Certifications and release of payments.**

A veteran or servicemember must be pursuing a program of education in order to receive payment of educational assistance allowance under 38 U.S.C. chapter 32. To ensure that this is the case, the provisions of this section must be met when a veteran or servicemember is seeking such payment.

(a) *General.* VA will pay educational assistance to a veteran or servicemember (other than one pursuing a program of apprenticeship, other on-job training, or a correspondence course; one seeking reimbursement for taking an approved licensing or certification test; or one who qualifies for an advance payment) only after:

\* \* \* \* \*  
(38 U.S.C. 3680(g), 3689)

\* \* \* \* \*

■ 41. Section 21.5137 is added to read as follows:

**§ 21.5137 Benefit payments and charges against entitlement for taking an approved licensing or certification test.**

(a) *Benefit payments.* The amount of educational assistance allowance VA will pay to a veteran or servicemember for taking an approved licensing or certification test, if the veteran or servicemember is entitled to receive such benefit payments, will be the lowest of the following:

- (1) The fee the organization or entity offering the test charges for taking the test;
- (2) \$2,000; or
- (3) The total remaining amount of the veteran's or servicemember's contributions to the fund and the contributions the Secretary of Defense has made to the fund on behalf of the veteran or servicemember.

(Authority: 38 U.S.C. 3222, 3231, 3232(c), 3452(b), 3689)

(b) *Charge against entitlement.* For educational assistance allowance paid for taking an approved licensing or certification test, VA will make a charge against the veteran's or servicemember's entitlement by dividing the amount paid under paragraph (a) of this section by the monthly amount as calculated under § 21.5138(c). The calculation will

assume that the veteran or servicemember is a full-time student.

(Authority: 38 U.S.C. 3232(c), 3452(b), 3689)

■ 42. Section 21.5138 is amended by:

- a. Revising the introductory text.
- b. Revising the introductory text of paragraph (a) and the introductory text of paragraphs (a)(1) through (a)(5).
- c. Revising the introductory text of paragraph (b).
- d. In paragraph (c), removing "The Department of Veterans Affairs" and adding, in its place, "Under this section, VA" and removing "the Department of Veterans Affairs" and adding, in its place, "VA".

The revisions read as follows:

**§ 21.5138 Computation of benefit payments and monthly rates.**

Except as provided in §§ 21.5136(b)(1) and 21.5137(a), for purposes of this subpart VA will compute benefit payments and monthly rates as provided in this section.

(Authority: 38 U.S.C. 3231, 3233, 3241, 3491, 3680, 3689)

(a) *Computation of entitlement factor.*

(1) For residence training, VA will compute an entitlement factor as follows:

\* \* \* \* \*

(2) For correspondence training, VA will compute an entitlement factor as follows:

\* \* \* \* \*

(3) For apprenticeship and other on-job training, VA will compute an entitlement factor as follows:

\* \* \* \* \*

(4) For cooperative training, VA will compute an entitlement factor as follows:

\* \* \* \* \*

(5) For flight training, VA will compute an entitlement factor as follows:

\* \* \* \* \*

(b) *Computation of benefit payment.* Under this section, VA will compute benefit payments as follows:

\* \* \* \* \*

■ 43. Section 21.5200 is amended by:

- a. In paragraph (d), removing "by schools".
- b. In paragraph (j), adding a comma after the word "jurisdiction".
- c. Removing the information collection approval parenthetical at the end of the section.

■ 44. Section 21.5230 is amended by:

- a. In paragraph (a) introductory text, removing "under chapter 32, title 38 U.S.C., only if it—" and adding, in its place, "for a veteran or servicemember under 38 U.S.C. chapter 32, only if—".

■ b. In paragraph (a)(1), removing “Meets” and adding, in its place, “The program meets”, and removing “of this part”.

■ c. Revising paragraphs (a)(2), (a)(3), and (a)(4).

■ d. In paragraph (b), removing “serviceperson” both places that it appears and adding, in its place, “servicemember”.

The revisions read as follows:

**§ 21.5230 Programs of education.**

(a) \* \* \*

(2) Except for a program consisting of a licensing or certification test, the program has an objective as described in § 21.5021(r) or (s);

(3) Any courses, subjects, or licensing or certification tests in the program are approved for VA training; and

(4) Except for a program consisting of a licensing or certification test designed to help the veteran or servicemember maintain employment in a vocation or profession, the veteran or servicemember is not already qualified for the objective of the program.

(Authority: 38 U.S.C. 3202(2), 3689(b))

\* \* \* \* \*

■ 45. Section 21.5250 is amended by:

■ a. Revising paragraphs (a)(1), (a)(2), (a)(3), (a)(7), and (a)(14).

■ b. Adding paragraph (a)(17) immediately before the authority citation for paragraph (a).

The revisions and addition read as follows:

**§ 21.5250 Courses.**

(a) \* \* \*

(1) Section 21.4250 (except paragraph (c)(1))—Course and licensing and certification test approval; jurisdiction and notices.

(2) Section 21.4251—Minimum period of operation requirement for educational institutions.

(3) Section 21.4252—Courses precluded; erroneous, deceptive, or misleading practices.

\* \* \* \* \*

(7) Section 21.4256—Correspondence programs and courses.

\* \* \* \* \*

(14) Section 21.4265—Practical training approved as institutional training or on-job training.

\* \* \* \* \*

(17) Section 21.4268—Approval of licensing and certification tests.

\* \* \* \* \*

■ 46. Section 21.5294 is amended by:

■ a. Revising paragraph (d)(3)(iv) and the authority citation following paragraph (d)(3).

■ b. Removing paragraph (d)(4).

The revisions read as follows:

**§ 21.5294 Transfer of entitlement.**

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(iv) Section 21.5131, and

\* \* \* \* \*

(Authority: Sec. 903, Pub. L. 96–342, 94 Stat. 1115)

**Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)**

■ 47. The authority citation for part 21, subpart K is revised to read as follows:

**Authority:** 38 U.S.C. 501(a), chs. 30, 36, and as noted in specific sections.

■ 48. Section 21.7020 is amended by:

■ a. In the introductory text, removing “apply.” (See also additional definitions in § 21.1029).” and adding, in its place, “apply.”.

■ b. In paragraph (b)(15), removing “provided” and adding, in its place, “provided in”.

■ c. In paragraph (b)(23)(iii), removing the word “and” at the end of the paragraph.

■ d. In paragraph (b)(23)(iv)(B), removing the period and adding “; and” in its place.

■ e. Adding paragraph (b)(23)(v) immediately before the authority citation for paragraph (b)(23).

■ f. Revising the authority citation for paragraph (b)(23).

■ g. In paragraph (b)(25)(i)(F), removing the word “or”, and in paragraph (b)(25)(i)(G), removing the period and adding “, or” in its place.

■ h. Adding paragraph (b)(25)(i)(H).

■ i. Revising the authority citation for paragraph (b)(25).

■ j. Revising paragraph (b)(37).

■ k. Adding paragraphs (b)(52), (b)(53), (b)(54), and (b)(55).

The revisions and additions read as follows:

**§ 21.7020 Definitions.**

\* \* \* \* \*

(b) \* \* \*

(23) \* \* \*

(v) Includes a licensing or certification test, the passing of which demonstrates an individual’s possession of the knowledge or skill required to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession, provided that VA or a State approving agency has approved the test and the licensing or credentialing organization or entity that offers the test as provided in 38 U.S.C. 3689.

(Authority: 38 U.S.C. 3002(3), 3452(b), 3689)

\* \* \* \* \*

(25) \* \* \*

(i) \* \* \*

(H) A licensing or certification test taken on or after March 1, 2001.

(ii) \* \* \*

(Authority: 38 U.S.C. 3002, 3034, 3452, 3680(g), 3689; Pub. L. 98–525)

\* \* \* \* \*

(37) *Training establishment.* The term *training establishment* means any establishment providing apprentice or other training on-the-job, including those under the supervision of a college, university, any State department of education, any State apprenticeship agency, any State board of vocational education, any joint apprenticeship committee, the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. chapter 4C, or any agency of the Federal government authorized to supervise such training.

(Authority: 38 U.S.C. 3002, 3452)

\* \* \* \* \*

(52) *Certification test.* The term *certification test* means a test that an individual must pass in order to receive a certificate that provides an affirmation of an individual’s qualifications in a specified occupation.

(Authority: 38 U.S.C. 3002(3), 3452(b), 3689)

(53) *Licensing test.* The term *licensing test* means a test offered by a State, local, or Federal agency, the passing of which is a means, or part of a means, to obtain a license. That license must be required by law in order for the individual to practice an occupation in the political jurisdiction of the agency offering the test.

(Authority: 38 U.S.C. 3002(3), 3452(b), 3689)

(54) *Organization or entity offering a licensing or certification test.* (i) The term *organization or entity offering a licensing or certification test* means:

(A) An organization or entity that causes a licensing test to be given and that will issue a license to an individual who passes the test;

(B) An organization or entity that causes a certification test to be given and that will issue a certificate to an individual who passes the test; or

(C) An organization or entity that administers a certification test for the organization or entity that will issue a certificate to an individual who passes the test, provided that the administering organization or entity can provide all required information and certifications under § 21.4268 to the State approving agency and to VA.

(ii) This term does not include:

(A) An organization or entity that develops and/or proctors a licensing or

certification test, but does not issue the license or certificate; or

(B) An organization or entity that administers a test but does not issue the license or certificate, if that administering organization or entity cannot provide all required information and certifications under § 21.4268 to the State approving agency and to VA.

(Authority: 38 U.S.C. 3002(3), 3452(b), 3689)

(55) *Tuition assistance top-up.* The term *tuition assistance top-up* means a payment of basic educational assistance to meet all or a portion of the charges of an educational institution for the education or training of a servicemember that are not met by the Secretary of the military department concerned under 10 U.S.C. 2007(a) or (c).

(Authority: 38 U.S.C. 3014(b))

\* \* \* \* \*

**§ 21.7032 [Amended]**

■ 49. Section 21.7032 is amended by:

■ a. In paragraph (a), removing “§ 21.1032.” and adding, in its place, “§ 21.1033.”.

■ b. In paragraph (b)(2), removing “§ 21.7131(k).” and adding, in its place, “§ 21.7131(l).”.

**§ 21.7051 [Amended]**

■ 50. In § 21.7051, paragraph (a)(1) is amended by removing “§ 21.1032(c) of this part.” and adding, in its place, “§ 21.1033(c).”.

■ 51. Section 21.7075 is added to read as follows:

**§ 21.7075 Entitlement to tuition assistance top-up.**

An individual who is entitled to educational assistance under 38 U.S.C. chapter 30 is also entitled to 36 months of tuition assistance top-up. This entitlement is parallel to, and does not replace, the entitlement to educational assistance available under § 21.7072. If the individual receives tuition assistance top-up, VA will make a charge against both the entitlement under § 21.7072 and the entitlement under this section. The charge will be as described in § 21.7076(b)(11).

(Authority: 38 U.S.C. 3013, 3014(b), 3032)

■ 52. Section 21.7076 is amended by:

■ a. In paragraph (a)(2) and the introductory text of paragraph (a)(3), removing “service member” and adding, in its place, “servicemember”.

■ b. In paragraph (a)(3)(iii), removing the word “or” at the end of the paragraph.

■ c. In paragraph (a)(3)(iv), removing the period and adding a semicolon in its place.

■ d. Adding paragraphs (a)(3)(v) and (a)(3)(vi).

■ e. In paragraph (a)(4)(i), removing “service members” and adding, in its place, “servicemembers”.

■ f. Revising the authority citation following paragraph (a).

■ g. Revising paragraph (b)(1) introductory text and the authority citation following paragraphs (b)(2)(ii) and (b)(6)(ii).

■ h. Adding authority citations following paragraphs (b)(3)(iii), (b)(4), and (b)(5)(ii).

■ i. Adding paragraphs (b)(10) and (b)(11).

The revisions and additions read as follows:

**§ 21.7076 Entitlement charges.**

(a) \* \* \*

(3) \* \* \*

(v) Is receiving educational assistance for taking an approved licensing or certification test; or

(vi) Is receiving tuition assistance top-up.

\* \* \* \* \*

(Authority: 38 U.S.C. 3013, 3014(b), 3014A, 3689)

(b) \* \* \*

(1) Except for those pursuing correspondence training, flight training, apprenticeship or other on-job training; those receiving tuition assistance top-up; those receiving educational assistance for taking an approved licensing or certification test; those receiving tutorial assistance; and those receiving an accelerated payment, VA will make a charge against entitlement:

\* \* \* \* \*

(2) \* \* \*

(ii) \* \* \*

(Authority: 38 U.S.C. 3013)

(3) \* \* \*

(iii) \* \* \*

(Authority: 38 U.S.C. 3032(c))

(4) \* \* \*

(Authority: 38 U.S.C. 3015(e), 3032(c))

(5) \* \* \*

(ii) \* \* \*

(Authority: 38 U.S.C. 3032(d))

(6) \* \* \*

(ii) \* \* \*

(Authority: 38 U.S.C. 3032(c), 3032(d))

\* \* \* \* \*

(10) When a servicemember receives tuition assistance top-up, VA will make a charge against his or her entitlement as established under § 21.7072 equal to the number of months and days determined by dividing the total amount paid by an amount equal to the servicemember’s monthly rate of basic educational assistance as calculated under § 21.7136. VA will make a charge

against his or her tuition assistance top-up entitlement as established under § 21.7075 by subtracting from that entitlement the total number of months and days in the term, quarter, or semester for which the servicemember received tuition assistance.

(Authority: 38 U.S.C. 3014(b))

(11) When a veteran or servicemember receives educational assistance for taking an approved licensing or certification test, VA will make a charge against his or her entitlement equal to the number of months and days determined by dividing the total amount paid by an amount equal to the servicemember’s monthly rate of basic educational assistance as calculated under § 21.7136, excluding any additional “kicker” that may be paid under § 21.7136(g).

(Authority: 38 U.S.C. 3032(f)(2))

\* \* \* \* \*

■ 53. Section 21.7110 is revised to read as follows:

**§ 21.7110 Selection of a program of education.**

(a) *Payments of educational assistance are usually based on pursuit of a program of education.* In order to receive educational assistance under 38 U.S.C. chapter 30, a veteran or servicemember must—

(1) Be pursuing an approved program of education;

(2) Be pursuing refresher or deficiency courses;

(3) Be pursuing other preparatory or special education or training courses necessary to enable the veteran or servicemember to pursue an approved program of education;

(4) Have taken an approved licensing or certification test, for which he or she is requesting reimbursement; or

(5) Be an individual who has taken a course for which the individual received tuition assistance provided under a program administered by the Secretary of a military department under 10 U.S.C. 2007(a) or (c), for which the individual is requesting tuition assistance top-up.

(Authority: 38 U.S.C. 3014, 3023, 3034, 3689)

(b) *Approval of a program of education.* VA will approve a program of education under 38 U.S.C. chapter 30 that a veteran or servicemember selects if:

(1) It meets the definition of a program of education found in § 21.7020(b)(23);

(2) Except for a program consisting of a licensing or certification test, has an objective as described in § 21.7020(b)(13) or (22);

(3) The courses, subjects, or licensing or certification tests in the program are approved for VA training; and

(4) Except for a program consisting of a licensing or certification test designed to help the veteran or servicemember maintain employment in a vocation or profession, the veteran or servicemember is not already qualified for the objective of the program.

(Authority: 38 U.S.C. 3002(3), 3034, 3471, 3689)

■ 54. Section 21.7122 is amended by:

■ a. Revising paragraphs (a), (b), and (c), and the authority citation for paragraph (e).

■ b. In paragraph (e)(7), removing the word “or”.

■ c. In paragraph (e)(8), removing the period and adding “; or” in its place.

■ d. Adding paragraph (e)(9).

The revisions and addition read as follows:

**§ 21.7122 Courses precluded.**

(a) *Unapproved courses.* The provisions of this section which refer to a State approving agency will be deemed to refer to VA with respect to a State when that State does not have and fails or declines to create or designate a State approving agency; or fails to enter into an agreement as provided in § 21.4153 (see § 21.4150(c)). Except for payment of tuition assistance top-up, VA will not pay educational assistance for:

(1) An enrollment in any course that a State approving agency has not approved;

(2) A new enrollment in a course while a State approving agency has suspended the course for new enrollments;

(3) Any period within an enrollment in a course if the period occurs after the date a State approving agency disapproves the course; or

(4) Taking a licensing or certification test after the date a State approving agency disapproves the test. See § 21.7220.

(Authority: 38 U.S.C. 3014(b), 3034, 3672)

(b) *Courses outside a program of education.* VA will not pay educational assistance for an enrollment in any course that is not part of a program of education unless the veteran or servicemember is enrolled in:

(1) A refresher course (including a course which will permit the veteran or servicemember to update knowledge and skills or be instructed in the technological advances which have occurred in the veteran's or servicemember's field of employment);

(2) A deficiency course;

(3) A preparatory, special education, or training course necessary to enable the veteran or servicemember to pursue an approved program of education; or

(4) A course for which the veteran or servicemember is seeking tuition assistance top-up.

(Authority: 38 U.S.C. 3002(3), 3014(b), 3034, 3452(b))

(c) *Erroneous, deceptive, misleading practices.* (1) VA will not pay educational assistance for:

(i) An enrollment in any course offered by an educational institution that uses advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading by actual statement, omission, or intimidation.

(ii) Taking a licensing or certification test if the organization or entity offering the test uses advertising or sales practices, or candidate handbooks, that are erroneous, deceptive, or misleading by actual statement, omission, or intimidation.

(2) VA will apply the provisions of § 21.4252(h) in making these payment decisions.

(Authority: 3034, 3689(d), 3696)

\* \* \* \* \*

(e) \* \* \*

(9) Taking a licensing or certification test after the date the State approving agency suspends approval of the test.

(Authority: 38 U.S.C. 3002(3), 3034, 3672(a), 3676, 3680(a), 3680A(a), 3680A(f), 3680(g), 3689(d))

■ 55. Section 21.7124 is revised to read as follows:

**§ 21.7124 Overcharges.**

(a) *Overcharges by educational institutions may result in the disapproval of enrollments.* VA may disapprove an educational institution for further enrollments when the educational institution charges or receives from a veteran or servicemember tuition and fees that exceed the established charges that the educational institution requires from similarly circumstanced nonveterans enrolled in the same course.

(Authority: 38 U.S.C. 3034, 3690(a))

(b) *Overcharges by organizations or entities offering licensing or certification tests may result in disapproval of tests.* VA may disapprove an organization or entity offering a licensing or certification test when the organization or entity offering the test charges or receives from a veteran or servicemember fees that exceed the established fees that the organization or entity requires from similarly circumstanced nonveterans taking the same test.

(Authority: 38 U.S.C. 3689(d), 3690(a))

■ 56. Section 21.7131 is amended by:

■ a. Revising the introductory text.

■ b. Redesignating paragraph (a)(1) introductory text and paragraphs (a)(1)(i) through (a)(1)(v) as paragraphs (a)(1)(i) and paragraphs (a)(1)(i)(A) through (a)(1)(i)(E), respectively; redesignating paragraph (a)(2) introductory text and paragraphs (a)(2)(i) and (a)(2)(ii) as paragraph (a)(1)(ii) and paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B), respectively; and adding a paragraph (a)(1) heading and new paragraph (a)(2).

■ c. Revising the authority citation following paragraph (a).

■ d. Removing the information collection approval parenthetical following paragraph (p).

The revisions and additions read as follows:

**§ 21.7131 Commencing dates.**

VA will determine under this section the commencing date of an award or increased award of educational assistance. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable commencing dates.

(a) \* \* \*

(1) For other than licensing or certification tests.

\* \* \* \* \*

(2) *For licensing or certification tests.* VA will award educational assistance for the cost of a licensing or certification test only when the veteran or servicemember takes such test—

(i) While the test is approved under 38 U.S.C. chapter 36;

(ii) While the veteran or servicemember is eligible for educational assistance under this subpart; and

(iii) No more than one year before the date VA receives a claim for reimbursement of the cost of the test.

(Authority: 38 U.S.C. 3014, 3023, 3034, 3672, 3689, 5110, 5113)

\* \* \* \* \*

■ 57. Section 21.7135 is amended by:

■ a. In the introductory text of paragraph (i), removing “§ 21.4211(d) and (g)” and adding, in its place, “§§ 21.4215(d) and 21.4216”.

■ b. In paragraph (i)(2), removing “§ 21.4211(d) and (g)” and adding, in its place, “§ 21.4215(d)”.

■ c. In paragraph (j)(1), removing “director” and adding, in its place, “Director”.

■ d. In paragraphs (j) and (k), removing “facility” each place that it appears, and adding, in its place, “Regional Processing Office”.

- 58. Section 21.7140 is amended by:
- a. Adding an authority citation for paragraph (b).
  - b. Revising paragraph (c) introductory text, paragraph (c)(1) introductory text, and the authority citation following paragraph (c)(1)(ii).
  - c. Adding paragraphs (c)(4) and (c)(5), and, at the end of the section, an information collection approval parenthetical.

The revisions and additions read as follows:

**§ 21.7140 Certifications and release of payments.**

\* \* \* \* \*

(b) \* \* \*

(Authority: 38 U.S.C. 3014A)

(c) *Other payments.* Except for an individual who is seeking tuition assistance top-up, an individual must be pursuing a program of education in order to receive payments of educational assistance under 38 U.S.C. chapter 30. To ensure that this is the case, the provisions of this paragraph must be met.

(1) VA will pay educational assistance to a veteran or servicemember (other than one pursuing a program of apprenticeship, other on-job training, or a correspondence course; one seeking tuition assistance top-up; one seeking reimbursement for taking an approved licensing or certification test; one who qualifies for an advance payment; one who qualifies for an accelerated payment; or one who qualifies for a lump sum payment) only after:

- (i) \* \* \*
- (ii) \* \* \*

(Authority: 38 U.S.C. 3680(g), 3689)

\* \* \* \* \*

(4) VA will pay educational assistance to a veteran or servicemember as reimbursement for taking an approved licensing or certification test only after the veteran or servicemember has submitted to VA a copy of the veteran's or servicemember's official test results and, if not included in the results, a copy of another official form (such as a receipt or registration form) that together must include:

- (i) The name of the test;
- (ii) The name and address of the organization or entity issuing the license or certificate;
- (iii) The date the veteran or servicemember took the test; and
- (iv) The cost of the test.

(Authority: 38 U.S.C. 3689)

(5) VA will pay educational assistance for tuition assistance top-up only after the individual has submitted to VA a copy of the form(s) that the military

service with jurisdiction requires for tuition assistance and that had been presented to the educational institution, covering the course or courses for which the claimant wants tuition assistance top-up. If the form(s) submitted did not contain the amount of tuition assistance charged to the individual, VA may delay payment until VA obtains that information from the educational institution. Examples of these forms include:

(i) DA Form 2171, Request for Tuition Assistance—Army Continuing Education System;

(ii) AF Form 1227, Authority for Tuition Assistance—Education Services Program;

(iii) NAVMC 10883, Application for Tuition Assistance, and either NAVEDTRA 1560/5, Tuition Assistance Authorization or NAVMC (page 2), Tuition Assistance Authorization;

(iv) Department of Homeland Security, USCG CG-4147, Application for Off-Duty Assistance; and

(v) Request for Top-Up: eArmyU Program.

(Authority: 38 U.S.C. 5101(a))

\* \* \* \* \*

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900-0695 and 2900-0698.)

- 59. Section 21.7142 is revised to read as follows:

**§ 21.7142 Accelerated payments, payment of tuition assistance top-up, and licensing or certification test reimbursement.**

(a) *Amount of accelerated payment.* An accelerated payment will be the lesser of—

(1) The amount equal to 60 percent of the charged tuition and fees for the term, quarter, or semester (or the entire program of education for those programs not offered on a term, quarter, or semester basis), or

(2) The aggregate amount of basic educational assistance to which the individual remains entitled under 38 U.S.C. chapter 30 at the time of the payment.

(Authority: 38 U.S.C. 3014A)

(b) *Amount of tuition assistance top-up.* The amount of tuition assistance top-up VA will pay to an individual for a course is the lowest of the following:

(1) All of the charges of the educational institution for the individual's education or training that the Secretary of the military department concerned has not paid under 10 U.S.C. 2007(a) or 2007(c);

(2) That portion of the charges of the educational institution for the individual's education that the

Secretary of the military department concerned has not paid under 10 U.S.C. 2007(a) or 2007(c) and for which the individual has stated to VA that he or she wishes to receive payment;

(3) An amount VA will determine by multiplying the individual's remaining months and days of entitlement to educational assistance as provided under § 21.7072 or § 21.7073 by the individual's monthly rate of basic educational assistance as provided under § 21.7136 or § 21.7137, as appropriate;

(4) An amount VA will determine by multiplying the individual's remaining months and days of entitlement to tuition assistance top-up as provided under § 21.7075 by the individual's monthly rate of basic educational assistance as provided under § 21.7136 or § 21.7137, as appropriate; or

(5) An amount VA will determine by—

(i) Dividing the total number of days from the date on which the individual became eligible for educational assistance under the Montgomery GI Bill—Active Duty by the number of days in the term during which the individual took the course or course for which he or she wants tuition assistance top-up; and

(ii) Multiplying the result by the amount stated in paragraph (a)(1) or (a)(2) of this section, as appropriate.

(Authority: 38 U.S.C. 3014(b))

(c) *Amount of reimbursement for taking a licensing or certification test.* The amount of educational assistance VA will pay as reimbursement for taking an approved licensing or certification test is the lowest of the following:

(1) The fee that the licensing or certification organization offering the test charges for taking the test;

(2) \$2,000; or

(3) An amount VA will determine by multiplying the veteran's or servicemember's remaining months and days of entitlement to educational assistance as provided under § 21.7072 or § 21.7073 by the veteran's or servicemember's monthly rate of basic educational assistance as provided under § 21.7136 or § 21.7137, as appropriate.

(Authority: 38 U.S.C. 3032(f))

- 60. Section 21.7150 is amended by:
- a. Removing "The" and adding, in its place, "Except for a veteran or servicemember seeking tuition assistance top-up or reimbursement for taking an approved licensing or certification test, the".

- b. Revising the authority citation.

The revision reads as follows:

**§ 21.7150 Pursuit.**

\* \* \* \* \*

(Authority: 38 U.S.C. 3034(b))

■ 61. Section 21.7152 is amended by:

■ a. In the introductory text, removing “As stated in § 21.7140 of this part” and adding, in its place, “Except as stated in § 21.7140”.

■ b. Revising paragraph (a).

The revision reads as follows:

**§ 21.7152 Certification of enrollment.**

\* \* \* \* \*

(a) *Educational institutions must certify most enrollments.* VA does not, as a condition of payment of tuition assistance top-up or advance payment, require educational institutions to certify the enrollments of veterans or servicemembers who either are seeking tuition assistance top-up or, in the cases described in § 21.7151, are seeking an advance payment. VA does not require organizations or entities offering a

licensing or certification test to certify the fact that the veteran or servicemember took the test. In all other cases the educational institution must certify the veteran’s or servicemember’s enrollment before he or she may receive educational assistance. This certification must be in a form specified by the Secretary and contain such information as the Secretary may specify.

(Authority: 38 U.S.C. 3014(b), 3031, 3034, 3482(g), 3680, 3687, 3689, 5101(a))

\* \* \* \* \*

■ 62. Section 21.7220 is amended by:

■ a. Revising paragraphs (b)(1) and

(b)(2).

■ b. In paragraphs (b)(3) through (b)(10), removing the commas at the end of the paragraphs and adding semicolons in their places.

■ c. In paragraph (b)(11), removing the period and adding “; and” in its place.

■ d. Adding paragraph (b)(12) immediately before the authority citation for paragraph (b).

The revisions and addition read as follows:

**§ 21.7220 Course approval.**

\* \* \* \* \*

(b) \* \* \*

(1) Section 21.4250 (except paragraph (c)(1))—Jurisdiction for course and licensing and certification test approval and approval notices;

(2) Section 21.4251—Minimum period of operation requirement for educational institutions;

\* \* \* \* \*

(12) Section 21.4268—Approval of licensing and certification tests.

\* \* \* \* \*

[FR Doc. E7-5842 Filed 4-4-07; 8:45 am]

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