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3. The important elements of typical Federal Register documents.

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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, July 17, 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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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Rules and Regulations

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

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

DEPARTMENT OF THE INTERIOR

Office of the Secretary

2 CFR Part 1400

43 CFR Parts 12, 42, and 43

RIN 1090–AA96

Department of the Interior Implementation of OMB Guidance on Nonprocurement Debarment and Suspension

AGENCY: Office of the Secretary, Interior.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of the Interior (Department) proposes to remove its regulations implementing the government-wide common rule on nonprocurement debarment and suspension, and to adopt in their place the Office of Management and Budget's (OMB) guidance. This regulatory action would implement OMB's initiative to streamline and consolidate all federal regulations on nonprocurement debarment and suspension into one part of the CFR. The Department does not intend to modify any of its current policy.

DATES: This interim rule is effective July 18, 2007. Submit comments on this interim rule by August 17, 2007.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods listed below. Please use the Regulation Identifier Number (RIN) 1090–AA96 in your message:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- E-mail: *Melodee_Stith@ios.doi.gov.* Please submit Internet comments as an ASCII file and avoid the use of special characters and any form of encryption. Also, please include ''Attn: RIN 1090–AA96'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, call the contact person listed below.
- Regular U.S. Mail: E. Melodee Stith, U.S. Department of the Interior, Office of Acquisition and Property Management, 1849 C Street, NW., Mail Stop 2607–MIB, Washington, DC 20240.
- Overnight mail, courier, or hand-delivery: E. Melodee Stith, U.S. Department of the Interior, Office of Acquisition and Property Management, 1849 C Street, NW., Mail Stop 2607–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Melodee Stith at (202) 208–5830 or by e-mail at *Melodee_Stith@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

Background

On August 31, 2005, the Office of Management and Budget (OMB) issued an interim final guidance that implemented its Guidance for Governmentwide Debarment and Suspension (Nonprocurement), codified in Part 180 of Title 2 of the Code of Federal Regulations (70 FR 51862, August 31, 2005). In addition to restating and updating its guidance on nonprocurement debarment and suspension, the interim final guidance requires all Federal agencies to adopt a new approach to Federal agency implementation of the guidance. OMB requires each agency to issue a brief rule that: (1) Adopts the guidance, giving it regulatory effect for that agency's activities; and (2) states any agency-specific additions, clarifications, and exceptions to the government-wide policies and procedures contained in the guidance. That guidance also requires agencies to implement the OMB guidance by February 28, 2007.

Pursuant to the requirements in OMB's interim final guidance, the Department of the Interior (Department) proposes to: (1) Remove 43 CFR Part 42; (2) replace the Department's part containing the full text of the debarment and suspension common rule with a brief part implementing OMB's guidance and any provisions specific to the Department; (3) co-locate the Department's part with OMB's guidance in 2 CFR along with other agencies' regulations in that title; and (4) revise references in 43 CFR Part 12 with the citation to the Department's regulations located in Title 2, CFR Subtitle B section 1400.

This interim final regulatory action would implement the OMB's initiative to streamline and consolidate all Federal regulations on nonprocurment debarment and suspension into one part of the CFR, and does not make any change to current policy and procedures. Under 5 U.S.C. 553(b)(3)(A) agencies are not required to undergo notice and comment procedure for ''interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice.''

Invitation to Comment

We intend the new part in 2 CFR to adopt the OMB guidelines with the same additions and clarifications made to the common rule on nonprocurement debarment and suspension in the **Federal Register** publication of November 26, 2003 (68 FR 66628).

Administrative Procedure Act

The Department has determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), do not apply because of the good cause exception under 5 U.S.C. 553(b)(3)(B), which allows the agency to suspend the notice and public procedure when the agency finds for good cause that those requirements are impractical, unnecessary, and contrary to the public interest. This action would merely remove the Department's current policy and provisions related to the debarment and suspension common rule and replace it with a brief part adopting OMB's guidance and implementing any provisions specific to the Department. In addition, it would co-locate the Department's regulations with OMB's guidance in 2 CFR along with other agencies' rules in that title. These revisions are purely administrative in nature and do not modify the Department's current policy.

Executive Order 12866

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

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This action would merely remove the

Department's current policy and provisions related to the debarment and suspension common rule and replace it with a brief part adopting OMB's guidance and implementing any provisions specific to the Department. In addition, it would co-locate the Department's regulations with OMB's guidance in 2 CFR along with other agencies' rules in that title. These revisions are purely administrative in nature and do not modify the Department's current policy. Because these changes are not substantive, we believe that this action would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This action adopts the common rule established by OMB regarding persons who have been debarred or suspended. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. This rule makes non-substantive changes to the Department's nonprocurement debarment and suspension procedures.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Data Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

List of Subjects

2 CFR Subtitle B, Part 1400

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

43 CFR Part 12

Administrative practice and procedure, Administrative and audit requirements and cost principles for assistance programs.

43 CFR Part 42

Administrative practice and procedure, Governmentwide Debarment and Suspension (nonprocurement).

43 CFR Part 43

Administrative practice and procedure, Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

Dated: May 11, 2007.

James E. Cason,

Associate Deputy Secretary.

■ Accordingly, under the authority of 5 U.S.C. 301, the Department of the Interior makes the following amendments to the Code of Federal Regulations, Title 2, Subtitle B, Part 1400 and Title 43 CFR Parts 12, 42, and 43:

TITLE 2—GRANTS AND AGREEMENTS

■ 1. Add Chapter 14, consisting of Part 1400, to Subtitle B to read as follows:

CHAPTER 14—DEPARTMENT OF THE INTERIOR

PART 1400—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.
1400.10 What does this part do?
1400.20 When does this part apply to me?
1400.30 What policies and procedures must I follow?

Subpart A—General

1400.137 Who in the Department of the Interior may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

1400.215 Which nonprocurement transactions, in addition to those listed in 2 CFR 180.215, are not covered transactions?
1400.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

1400.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

1400.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subpart E–H—[Reserved]

Subpart I—Definitions

1400.930 Debarring official (Department of the Interior supplement to the definition at 2 CFR 180.930).

1400.970 Nonprocurement transaction (Department of the Interior supplement to the definition at 2 CFR 180.930).
1400.1010 Suspending official (Department of the Interior supplement to the definition at 2 CFR 180.930).

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); sec. 2455 Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 5 U.S.C. 301.

§ 1400.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Department of the Interior policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

§ 1400.20 When does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are—

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970, as supplemented by subpart B and § 1400.970);

(b) Respondent in a Department of the Interior suspension or debarment action;

(c) Department of the Interior debarment or suspension official, i.e., the Director, Office of Acquisition and Property Management; or

(d) Department of the Interior grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 1400.30 What policies and procedures must I follow?

(a) The Department of the Interior policies and procedures that you must follow are specified in:

(1) Each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180; and

(2) The supplement to each section of the OMB guidance that is found in this part under the same section number. (The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., Sec. 1400.220)).

(b) For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, Department of the Interior policies and procedures are those in the OMB guidance.

Subpart A—General

§ 1400.137 Who in the Department of the Interior may grant an exception to let an excluded person participate in a covered transaction?

Within the Department of the Interior, the Director, Office of Acquisition and Property Management has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

Subpart B—Covered Transactions

§ 1400.215 Which nonprocurement transactions, in addition to those listed in 2 CFR 180.215, are not covered transactions?

(a) Transactions entered into pursuant to Public Law 93–638, 88 Stat. 2203.

(b) Under natural resource management programs, permits, licenses, exchanges, and other acquisitions of real property, rights-of-way, and easements.

(c) Transactions concerning mineral patent claims entered into pursuant to 30 U.S.C. 22 *et seq.;* and

(d) Water service contracts and repayments entered into pursuant to 43 U.S.C. 485.

§ 1400.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2 CFR part 180), the Department of the Interior does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 1400.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 1400.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subpart E–H—[Reserved]

Subpart I—Definitions

§ 1400.930 Debarring official (Department of the Interior supplement to the definition at 2 CFR 180.930).

The Debarring Official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

§ 1400.970 Nonprocurement transaction (Department of the Interior supplement to the definition at 2 CFR 180.970).

In addition to those listed in 2 CFR 180.970, the Department of the Interior includes the following as nonprocurement transactions:

(a) Federal acquisition of a leasehold interest or any other interest in real property;

(b) Concession contracts;

(c) Disposition of Federal real and personal property and natural resources; and

(d) Any other nonprocurement transactions between the Department and a person.

§ 1400.1010 Suspending official (Department of the Interior supplement to the definition at 2 CFR 180.930).

The Suspending Official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

Subpart J—[Reserved]

TITLE 43, PUBLIC LANDS: INTERIOR

PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

■ 2. The authority citation for part 12 continues to read as follows:

Authority: E.O 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p.

235); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 5 U.S.C. 301; U.S.C. 6101 note.

§ 12.75 [Removed]

■ 3. Remove § 12.75.

§ 12.913 [Removed]

■ 4. Remove § 12.913.

PART 42—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) [REMOVED]

■ 5. Remove part 42.

PART 43—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

■ 6. The authority for part 43 continues to read as follows:

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 5 U.S.C. 301; 31 U.S.C.

§ 43.510 [Amended]

■ 7. Amend § 43.510(c) by removing the citation ''43 CFR Part 42'' and adding ''2 CFR Part 180'' in its place.

§ 43.630 [Amended]

■ 8. Amend § 43.630 by removing the phrase ''the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689'' and adding the citation ''2 CFR part 180'' in its place.

§ 43.670 [Amended]

■ 9. Amend § 43.670 by removing the phrase ''the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689'' and adding the citation ''2 CFR part 180'' in its place.

[FR Doc. 07–2949 Filed 6–15–07; 8:45 am]

BILLING CODE 4310–RF–M

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

RIN 3150–AI18

Administrative Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to update a telephone number for the Office of Information Services and an NRC Web site location. This document is necessary to inform the public of these changes to the NRC's regulations.

EFFECTIVE DATE: June 18, 2007.

FOR FURTHER INFORMATION CONTACT: Thomas Smith, Office of Information Services, Nuclear Regulatory Commission, Washington, DC 20555–0001, 301–415–7043, e-mail *TES@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC is revising its regulations to update a telephone number for the Office of Information Services and an NRC Web site location. The Web site contains detailed guidance on making electronic submissions to the agency. This guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1) and (2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

A regulatory analysis has not been prepared for this final rule. This final rule makes only minor administrative changes to the regulations that reference a telephone number and an NRC Web site, and imposes no burden on licensees. Therefore, a regulatory analysis is not necessary.

Backfit Analysis

The NRC has determined that these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1); therefore a backfit analysis is not necessary.

Congressional Review Act

In accordance with the Congressional Review Act, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Because these amendments deal solely with agency organization and procedure, and represent minor administrative matters which do not raise any significant policy or regulatory issue, the NRC has determined that notice and comment is not necessary under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(A), and that in any event there is good cause for dispensing with such notice and comment under 5 U.S.C. 553(d)(3)(B). In addition, the NRC has determined that good cause exists for making the rule immediately effective upon publication, as provided for under 5 U.S.C. 553(d)(3), because the amendments represent minor administrative matters which do not raise any significant policy or regulatory issue and do not impose any significant regulatory requirement upon any regulated entity or person.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, 42 U.S.C. 2201, as amended, and 42 U.S.C. 5841, the NRC is adopting the following amendments to 10 CFR Chapter I to read as follows:

10 CFR Chapter I [Amended]

■ 1. In Chapter I revise all references to ''(301) 415–6030'' to read ''(301) 415–0439''.

■ 2. In Chapter I revise all references to ''*http://www.nrc.gov/site-help/eie.html*'' to read ''*http://www.nrc.gov/site-help/e-submittals.html*''.

Dated at Rockville, Maryland, this 4th day of June, 2007.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. E7–11708 Filed 6–15–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lincomycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pharmacia & Upjohn Co., a Div. of Pfizer, Inc. The supplemental NADA provides for the use of lincomycin in feed of swine weighing greater than 250 pounds and for the addition of a reproductive cautionary statement to labeling.

DATES: This rule is effective June 18, 2007.

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

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., a Div. of Pfizer, Inc., 235 E. 42d St., New York, NY 10017, filed a supplement to NADA 97–505 that provides for use of LINCOMIX 20 (lincomycin hydrochloride) and LINCOMIX 50 Feed Medications in single-ingredient Type B and Type C medicated feeds for swine weighing greater than 250 pounds and for the addition of a reproductive caution statement to labeling. The supplemental application is approved as of May 23, 2007, and the regulations are amended in 21 CFR 558.325 to reflect the approval.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

■ 2. In § 558.325, add paragraph (c) and in the table in paragraphs (d)(2)(i) through (d)(2)(iv), in the ''Limitations'' column, remove ''Not to be fed to swine that weigh more than 250 lb.'' wherever it occurs to read as follows:

§ 558.325 Lincomycin.

* * * * *

(c) *Special considerations*—(1) Labeling of Type A medicated articles and Type B and Type C medicated feeds containing lincomycin shall bear the following directions: ''CAUTION: Do not allow rabbits, hamsters, guinea pigs, horses, or ruminants access to feeds containing lincomycin. Ingestion by these species may result in severe gastrointestinal effects.''

(2) Labeling of Type A medicated articles and Type B and Type C medicated feeds containing lincomycin intended for use in swine shall bear the following directions: ''CAUTION: Occasionally, swine fed lincomycin may within the first 2 days after the onset of treatment develop diarrhea and/or swelling of the anus. On rare occasions, some pigs may show reddening of the skin and irritable behavior. These conditions have been self-correcting within 5 to 8 days without discontinuing the lincomycin treatment.''

(3) Labeling of Type A medicated articles and single-ingredient Type B and Type C medicated feeds containing lincomycin intended for use in swine shall bear the following directions:

(i) No. 000009: ''CAUTION: The effects of lincomycin on swine reproductive performance, pregnancy, and lactation have not been determined. Not for use in swine intended for breeding when lincomycin is fed at 20 grams per ton of complete feed.''

(ii) Nos. 043733 and 051311: ''CAUTION: Not to be fed to swine that weigh more than 250 lb.''

* * * * *

Dated: June 8, 2007.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. E7–11611 Filed 6–15–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9331]

RIN 1545–BG46

Deemed IRAs in Governmental Plans/ Qualified Nonbank Trustee Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 408 of the Internal Revenue Code. The final regulations provide special rules for a governmental unit which seeks to qualify as a nonbank trustee of a deemed IRA that is part of its qualified employer plan. These final regulations affect only such governmental units.

DATES: Effective Date: June 18, 2007.

Applicability Date: For dates of applicability, see § 1.408–2(e)(8)(iv).

FOR FURTHER INFORMATION CONTACT: Linda L. Conway, 202–622–6090, or Cathy A. Vohs, 202–622–6090 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains final amendments to the Income Tax Regulations (26 CFR Part 1) under section 408 of the Internal Revenue Code of 1986 (Code). On July 22, 2004, temporary and proposed regulations under section 408 were issued. A notice of proposed rulemaking (REG–101447–04) was published in the **Federal Register** (69 FR 43786). The text of the temporary regulations also served as the text of the proposed regulations. The text of temporary § 1.408–2(e)(8) was published in the same issue of the **Federal Register** (69 FR 43735). The RIN published in connection with that notice of proposed rulemaking was 1545–BD07. However, due to technical difficulties that RIN is no longer valid and the RIN number of these final regulations is 1545–BG46. No comments were received regarding the proposed regulations.

Explanation of Provisions and Summary of Comments

These final regulations amend § 1.408–2(e) of the regulations to provide that a governmental unit may serve as the trustee of any deemed IRA established by that governmental unit as part of its qualified employer plan if that governmental unit establishes to the

satisfaction of the Commissioner that the manner in which it will administer the deemed IRA will be consistent with the requirements of section 408. These final regulations also provide special rules regarding the application of § 1.408–2(e) to governmental units. These final regulations are adopted without substantive change from the proposed and temporary regulations. These final regulations are applicable for written applications made on or after June 18, 2007. The rules in this section also may be relied on for applications submitted on or after August 1, 2003 (or such earlier application as the Commissioner deems appropriate) and before June 18, 2007.

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 also has 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 regulation does 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 preceding these final 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 author of these regulations is Linda L. Conway of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is 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.** Section 1.408–2(e)(8) is revised to read as follows:

§ 1.408–2 Individual retirement accounts.

* * * * *

(e) * * *

(8) *Special rules for governmental units*—(i) *In general.* A governmental unit that seeks to qualify as a nonbank trustee of a deemed IRA that is part of its qualified employer plan must demonstrate to the satisfaction of the Commissioner that it is able to administer the trust in a manner that is consistent with the requirements of section 408. The demonstration must be made by written application to the Commissioner. Notwithstanding the requirement of paragraph (e)(1) of this section that a person must demonstrate by written application that the requirements of paragraphs (e)(2) through (e)(6) of this section will be met in order to qualify as a nonbank trustee, a governmental unit that maintains a plan qualified under section 401(a), 403(a), 403(b) or 457 need not demonstrate that all of these requirements will be met with respect to any individual retirement accounts maintained by that governmental unit pursuant to section 408(q). For example, a governmental unit need not demonstrate that it satisfies the net worth requirements of paragraph (e)(3)(ii) of this section if it demonstrates instead that it possesses taxing authority under applicable law. The Commissioner, in his discretion, may exempt a governmental unit from certain other requirements upon a showing that the governmental unit is able to administer the deemed IRAs in the best interest of the participants. Moreover, in determining whether a governmental unit satisfies the other requirements of paragraphs (e)(2) through (e)(6) of this section, the Commissioner may apply the requirements in a manner that is consistent with the applicant's status as a governmental unit.

(ii) *Governmental unit.* For purposes of this special rule, the term *governmental unit* means a state, political subdivision of a state, and any agency or instrumentality of a state or political subdivision of a state.

(iii) *Additional rules.* The Commissioner may in revenue rulings, notices, or other guidance of general applicability provide additional rules for governmental units seeking approval as nonbank trustees.

(iv) *Effective/applicability date.* This section is applicable for written applications made on or after June 18, 2007. The rules in this section also may be relied on for applications submitted on or after August 1, 2003 (or such earlier application as the Commissioner deems appropriate) and before June 18, 2007.

§ 1.408–2T [Removed]

■ **Par. 3.** Section 1.408–2T is removed.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved:

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7–11636 Filed 6–15–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 07–025]

RIN 1625–AA00

Safety Zone; BART Transbay Tube Seismic Upgrade; San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a moving temporary safety zone in the navigable waters of San Francisco Bay, California, during geotechnical borings for a seismic upgrade of the Bay Area Rapid Transit (BART) Transbay tube. The borings will require placement of a drilling vessel at test sites along the BART Transbay tube. The safety zone will surround the vessel and move with the vessel as it conducts the tests at eighteen sites along the BART Transbay tube. This safety zone is necessary to protect persons and vessels from hazards, injury, and damage associated with the geotechnical borings. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or his designated representative.

DATES: This rule is effective from May 30, 2007 through June 25, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP San Francisco Bay 07–025 and are available for inspection or copying at the Waterways Safety Branch of Sector San Francisco, Yerba Buena Island, Bldg. 278, San Francisco, California 94130, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ensign Erin Bastick, U.S. Coast Guard

Sector San Francisco, at (415) 556–2950 or Sector San Francisco 24 hour Command Center at (415) 399–3547.

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. The dates for the geotechnical borings along the Transbay tube were not finalized and presented to the Coast Guard in time to draft and publish an NPRM. As such, the borings would commence before the rulemaking process could be completed. Any delay in implementing this rule is contrary to the public interest since immediate action is necessary in order to protect the maritime public from the hazards associated with the vibro penetration testing.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The dates for the geotechnical borings along the Transbay tube were not finalized and presented to the Coast Guard in time to publish this rule 30 days prior to its effective date. As such, the borings would commence before the rulemaking process could be completed. Delay in the effective date of this rule would expose the mariners and waterways users to undue hazards associated with the geotechnical borings.

Background and Purpose

Bay Area Rapid Transit has contracted Gregg Drilling & Testing, to conduct BART marine demonstration tests in support of their earthquake safety efforts. They will be conducting geotechnical borings for future seismic upgrades of the BART Transbay tube. The scope of the work will involve eighteen separate anchor spread locations, required to carry out the thirty-four geotechnical borings, located along the BART tube in the San Francisco Bay. The scope of work for the entire BART seismic upgrade project involves four primary activities carried out on the water. These activities include vibro penetration tests, vibro ground improvement, drilling, sampling and sonic borings.

The Gregg Drilling & Testing work will involve the drilling portion of the BART seismic upgrade project. Gregg Drilling & Testing will be deploying the vessel QUIN DELTA which is 120 feet long and 30 feet wide, with a drilling apparatus attached to its hull. The vessel QUIN DELTA will be located over the tube alignment to perform drilling. The drilling will penetrate the sea floor at a depth of five feet. The contents recovered will be collected onto the vessel and further analyzed offsite.

Discussion of Rule

This safety zone will encompass the navigable waters from the surface to the sea floor, located in the San Francisco Bay, encompassing a circular safety zone with a 300-yard radius extending from the drilling platform, vessel QUIN DELTA. The vessel QUIN DELTA will transit and conduct testing along the BART Transbay tube between two points: 37°47′44.55″ N Latitude by 122°23′28.34″ W Longitude at the western extreme and 37°48′31.29″ N Latitude by 122°20′17.12″ W Longitude on the eastern extreme. This area between the two points will be used to maneuver and anchor the vessel QUIN DELTA as it conducts the geotechnical borings from May 30, 2007 through June 25, 2007. The BART Project manager coordinated the boring locations with the local Bar Pilots and the Vessel Traffic Service to ensure the testing would result in minimum impact to vessel traffic. This moving safety zone around the drilling Barge QUIN DELTA is necessary to protect persons and vessels from hazards, injury, and damage associated with the geotechnical borings.

U.S. Coast Guard personnel will enforce this safety zone. Other Federal, State, or local agencies may assist the Coast Guard, including the Coast Guard Auxiliary. Section 165.23 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in a safety zone. Vessels or persons violating this section may be subject to both criminal and civil penalties.

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.

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users have been contacted to ensure the closure will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities. Not only is the safety zone small in size, but there will be ample space to navigate around the safety zone as well.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the San Francisco Bay from May 30, 2007 through June 25, 2007. Although this regulation prevents traffic from transiting a portion of San Francisco Bay during the testing, the effect of this regulation will not be significant because small vessels will be able to transit around the regulated area. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing.

Small entities and the maritime public will also be advised of this safety zone via public broadcast notice to mariners. In addition, vessels will be able to pass through the zone on a case-by-case basis. Therefore, the economic impact of this waterway closure is not expected to be significant.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. We expect this rule may affect owners and operators of vessels, some of which may be small entities, intending to fish, sightsee, transit, or anchor in the waters affected by this safety zone. This safety zone will not have a significant economic impact on a substantial number of small entities for several reasons: small vessel traffic will be able to pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the safety zone to engage in these activities.

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).

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 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.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have 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. Paragraph (34)(g) is applicable because this rule establishes a safety zone.

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–197, to read as follows:

§ 165.T11–197 Safety Zone; San Francisco Bay, California.

(a) *Location.* This safety zone will encompass the navigable waters from the surface to the sea floor, in the San Francisco Bay, and its limits will encompass a circular safety zone with a radius of 300-yards extending from and around the drilling vessel QUIN DELTA. This safety zone will move and continue to extend 300-yards from the vessel QUIN DELTA while it operates along the charted BART Transbay tube between the following two points: 37°47′44.55″ N Latitude by 122°23′28.34″ W Longitude at the western extreme and 37°48′31.29″ N Latitude by 122°20′17.12″ W Longitude on the eastern extreme.

(b) *Effective dates.* This rule is effective from May 30, 2007 through June 25, 2007. If the need for the safety zone ends prior to the scheduled termination time, the Captain of the Port (COTP) will cease enforcement of the safety zone.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone by all vessels and persons is prohibited, unless specifically authorized by the COTP San Francisco, or his designated representative.

(d) *Enforcement.* All persons and vessels shall comply with the

instructions of the Coast Guard COTP or his designated representative. The COTP's designated representative can be comprised of commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. The U.S. Coast Guard may be assisted in the patrol and enforcement of these two safety zones by local law enforcement as necessary.

Dated: May 29, 2007.

W.J. Uberti,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco, California.

[FR Doc. E7–11637 Filed 6–15–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 07–016]

RIN 1625–AA00

Safety Zone; City of San Francisco Fourth of July Fireworks Display, San Francisco Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of San Francisco Bay for the loading, transport, and launching of fireworks to celebrate Independence Day. This safety zone is established to ensure the safety of participants and spectators. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or his designated representative.

DATES: This rule is effective from 9 a.m. on July 3, 2007 to 10 p.m. on July 4, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket COTP San Francisco Bay 07–016 and are available for inspection or copying at Coast Guard Sector San Francisco, 1 Yerba Buena Island, San Francisco, California, 94130, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ensign Sheral Richardson, U.S. Coast Guard Sector San Francisco, at (415) 556–2950 ext. 136.

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. Logistical details surrounding the event were not finalized and presented to the Coast Guard in time to draft and publish an NPRM. As such, the event would occur before the rulemaking process was complete. Because of the dangers posed by the pyrotechnics used in this fireworks display, safety zones are necessary to provide for the safety of event participants, spectators, and vessels transiting the event area. Because of these safety concerns, it is in the public interest to have these regulations in effect during the event.

For the same reasons, the Coast Guard finds that good cause exists under 5 U.S.C. 553(d)(3) for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule would expose mariners to the dangers posed by the pyrotechnics used in this fireworks display.

Background and Purpose

The City of San Francisco is sponsoring a fireworks display on July 4, 2007 in the waters of San Francisco Bay near Pier 39. The fireworks display is meant for entertainment purposes in celebration of Independence Day. This safety zone is being issued to establish a temporary regulated area in San Francisco around the fireworks launch barge during loading of the pyrotechnics, during the transit of the barge to the display location, and during the fireworks display. This safety zone around the launch barge is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks barge. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone on specified waters of San Francisco Bay near Piers 39 and 50. During the loading of the fireworks barge, while the barge is being towed to the display location, and until the start of the fireworks display, the safety zone will apply to the navigable waters around and under the fireworks barge within a radius of 100 feet. Fifteen minutes prior to and during the twenty-five minute fireworks display, the area to which this safety zone applies to will increase in size to encompass the navigable waters around and under the fireworks barge within a radius of 1,000 feet. Loading of the pyrotechnics onto the fireworks barge is scheduled to commence at 9 a.m. on July 3, 2007, and will take place at Pier 50 in San Francisco. Towing of the barge from Pier 50 to the display location is scheduled to take place on July 4, 2007. During the fireworks display, scheduled to commence at approximately 9:30 p.m., the fireworks barge will be located approximately 1,000 feet off of Pier 39 in position 37°48.71′ N, 122°24.46′ W.

The effect of the temporary safety zone will be to restrict general navigation in the vicinity of the fireworks barge while the fireworks are loaded at Pier 50, during the transit of the fireworks barge, and until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the safety zone. This safety zone is needed to keep spectators and vessels a safe distance away from the fireworks barge to ensure the safety of participants, spectators, and transiting vessels.

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.

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via publicly broadcasted notice to mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities.

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 entities. This rule

will affect the following entities, some of which may be small entities: Owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area; (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the effected portion of San Francisco Bay to engage in these activities; (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and; (iv) the maritime public will be advised in advance of this safety zone via publicly broadcasted notice to mariners.

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 the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have 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. Paragraph (34)(g) is applicable because this rule establishes a safety zone. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T11–195 to read as follows:

§ 165.T11–195 Safety Zone; City of San Francisco Fourth of July Fireworks Display, San Francisco Bay, CA.

(a) *Location.* The following area is a safety zone: The waters of San Francisco Bay near Piers 39 and 50 surrounding a barge used as the launch platform for a fireworks display to be held in celebration of Independence Day. During the loading of the fireworks barge, during the transit of the fireworks barge to the display location, and until fifteen minutes prior to the start of the fireworks display, the safety zone will encompass the navigable waters, from surface to bottom, around the fireworks barge within a radius of 100 feet. During the fifteen minutes preceding the fireworks display and during the twenty-five minute fireworks display itself, the safety zone increases in size to encompass the navigable waters, from surface to bottom, around the fireworks launch barge within a radius of 1,000 feet. Loading of the pyrotechnics onto the fireworks barge is scheduled to commence at 9 a.m. on July 3, 2007, and will take place at Pier 50 in San Francisco. Towing of the barge from Pier 50 to the display location is scheduled to take place on July 4, 2007. During the fireworks display, scheduled to start at approximately 9:30 p.m. on July 4, 2007, the barge will be located approximately 1,000 feet off of Pier 39 in position 37°48.71′ N, 122°24.46′ W.

(b) *Effective period.* This section is effective from 9 a.m. on July 3, 2007 through 10 p.m. on July 4, 2007. If the event concludes prior to the scheduled termination time, the Coast Guard will cease enforcement of the safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone by any vessel or person is prohibited, unless specifically authorized by the Captain of the Port San Francisco, or his designated representative.

(d) *Enforcement.* All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, or the designated on-scene patrol personnel. Patrol personnel can be comprised of commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, or federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

The U.S. Coast Guard may be assisted in the patrol and enforcement of this safety zone by local law enforcement.

Dated: June 4, 2007.

W.J. Uberti,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco.

[FR Doc. E7–11716 Filed 6–15–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–07–032]

RIN 1625–AA00

Safety Zone; Recovery of Aircraft, Lake Michigan, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in Lake Michigan, Milwaukee, WI. This zone is intended to restrict vessels from a portion of Lake Michigan during the recovery of an aircraft that crashed in Lake Michigan. This temporary safety zone is necessary to protect divers and recovery workers and restrict spectators and vessels from the recovery site.

DATES: This rule is effective from 8:30 p.m. on June 5, 2007 to 10 p.m. on June 29, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD09–07–032 and are available for inspection or copying at U.S. Coast Guard Sector Lake Michigan, 2420 South Lincoln Memorial Drive, Milwaukee, Wisconsin 53207 between 8:30 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer Brad Hinken, U.S. Coast Guard Sector Lake Michigan, Prevention Department, 2420 South Lincoln Memorial Drive, Milwaukee, Wisconsin 53207, (414) 747–7154.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be impracticable as this safety zone was implemented for an emergency situation and required immediate activation. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of divers and other recovery workers recovering the wreckage of an aircraft that crashed in Lake Michigan on June 4, 2007. This safety zone is also intended to restrict spectators and media during the recovery of human remains. Establishing a safety zone to control vessel movement around the location of the crash site will help ensure the safety of persons and property involved in the recovery operation and provide privacy to the families of the persons deceased in the aircraft crash.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of divers and recovery workers during the recovery of aircraft wreckage and human remains. The safety zone will be in effect from 8:30 p.m. on June 5, 2007 to 10 p.m. on June 29, 2007. The safety zone encompasses all waters of Lake Michigan within a 1000-yard radius from the aircraft crash site located at position 43°01′52″ N, 087°51′23″ W (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This determination is based on the minimal time that vessels will be restricted from the zone

and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of Lake Michigan from 8:30 a.m. (local) on June 5, 2007 to 10 p.m. (local) on June 29, 2007.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can safely pass outside the safety zone during the recovery operations. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Lake Michigan to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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. 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).

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 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 would not result in such 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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that this safety zone and fishing rights protection need not be incompatible. We have also determined that 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. Nevertheless, Indian tribes that have questions concerning the provisions of this rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

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 procedure; and related management system practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD 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. This event establishes a safety zone; therefore paragraph (34)(g) of the Instruction applies.

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–032 to read as follows:

§ 165.T09–032 Safety Zone; Recovery of Aircraft, Lake Michigan, Milwaukee, WI.

(a) *Location.* The following area is a temporary safety zone: all waters of Lake Michigan within a 1000-yard radius from an aircraft crash site located at position 43°01′52″ N, 087°51′23″ W (NAD 83).

(b) *Effective period.* This regulation is effective from 8:30 p.m. on June 5, 2007 to 10 p.m. on June 29, 2007.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan, or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or his on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan or his on-scene representative.

Dated: June 5, 2007.

Bruce C. Jones,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. E7–11635 Filed 6–15–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2004–IN–0006; FRL–8327–1]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; NSR Reform Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On July 10, 2006, EPA proposed partial approval of revisions to Indiana's prevention of significant deterioration (PSD) and nonattainment new source review (NSR) construction permit programs. EPA received comments on this proposal on August 9, 2006. An adverse comment regarding the inclusion of hazardous air pollutants (HAPs) in Indiana's PSD rules was received. Subsequently, on January 17, 2007, the Indiana Department of Environmental Management (IDEM) requested the withdrawal of the portion of this submittal pertaining to HAPs. EPA is partially approving the portions of the Indiana rule that were proposed for approval on July 10, 2006 and were not withdrawn on January 17, 2007. As noted in the July 10, 2006, notice, we are not taking action on the Clean Unit and Pollution Control Project (PCP) portions of the Indiana rule.

DATES: This final rule is effective on July 18, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2004–IN–0006. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sam Portanova, Environmental Engineer, at (312) 886–3189 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3189, *portanova.sam@epa.gov*.

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

I. What Is EPA Addressing in This Document?
II. What Comments Did EPA Receive and What Are EPA's Responses?
III. What Action Is EPA Taking?
IV. Statutory and Executive Order Reviews

I. What Is EPA Addressing in This Document?

We are partially approving revisions to Indiana's PSD and nonattainment NSR construction permit programs. In our July 10, 2006, proposed partial approval (71 FR 38824), we discussed the history of Indiana's PSD and nonattainment NSR programs, the contents of the State's submission, and our analysis. Please consult that document for further information on this submittal.

EPA received comments on this proposal on August 9, 2006. The Alliance of Automobile Manufacturers (''the Alliance'') and the Air Permitting Forum (''the Forum'') urged EPA to partially disapprove the subsections of the definition of ''regulated NSR pollutant'' that reference HAPs listed under section 112 of the Clean Air Act (the Act).

On January 17, 2007, IDEM submitted a letter requesting the withdrawal of 326 IAC 2–2–1(uu)(5) from the state implementation plan (SIP) submittal, thus removing the references to HAPs from the definition of ''regulated NSR

pollutant.'' EPA is, therefore, taking no action on 326 IAC 2–2–1(uu)(5) and approving the remaining portions of the Indiana submittal proposed for approval on July 10, 2006.

II. What Comments Did EPA Receive and What Are EPA's Responses?

We received comments from the CASE Coalition, the Indiana Manufacturers Association, and Eli Lilly and Company supporting our July 10, 2006, proposal to partially approve the Indiana rules. Since these were not adverse comments, no further EPA response is necessary. As mentioned above, we also received a comment from the Alliance and the Forum asking EPA to partially disapprove the inclusion of HAPs in Indiana's PSD rules. The following is our response to this adverse comment.

Indiana included a new definition—''regulated NSR pollutant''—in its ''NSR Reform'' regulations. This definition is consistent with the definition in the federal rules, except that IDEM added a paragraph at 326 IAC 2–2–1(uu)(5) to reference HAPs from the existing state rules. On July 10, 2006, we proposed approval of the definition of ''regulated NSR pollutant'' as part of our proposed partial approval of Indiana's rules. In this proposal, we cited the preamble of the December 31, 2002, NSR rulemaking (67 FR 80240) as part of our justification:

> According to the preamble to the December 31, 2002, NSR rulemaking (67 FR 80240), ''State and local agencies with an approved PSD program may continue to regulate the HAP now exempted from federal PSD by section 112(b)(6) if their PSD regulations provide an independent basis to do so. These State and local rules remain in effect unless they are revised to provide similar exemptions.'' Indiana has included these HAP pollutants in its State PSD rules since prior to the 1990 amendments to the Act, which added the 112(b) HAP exemption. Therefore, Indiana may continue regulating these pollutants in its PSD rules.

The Alliance and the Forum questioned this position, asserting that section 112(b)(6) of the Act contains a prohibition on the application of PSD to these pollutants. After consideration of this comment, EPA agrees that Indiana's history of inclusion of HAPs in its PSD rules, by itself, does not serve as a sufficient ''independent basis'' for the approval of these pollutants in this SIP submittal. IDEM's letter of January 17, 2007, requesting the withdrawal of 326 IAC 2–2–1(uu)(5) from this SIP submittal, removes all references to HAPs from this SIP submittal. As such, EPA is taking no action on 326 IAC 2–2–1(uu)(5), and is approving the remaining portions of the Indiana submittal that were proposed for approval on July 10, 2006.

III. What Action Is EPA Taking?

EPA is approving into the Indiana SIP the revisions to Indiana's PSD and NSR construction permits program submitted by IDEM on September 2, 2004. The revisions meet the minimum program requirements of the December 31, 2002, EPA NSR Reform rulemaking. As requested in IDEM's October 25, 2005, letter to EPA, we are not taking action on the Clean Unit and PCP provisions of Indiana's rule. As also requested in IDEM's January 17, 2007, letter to EPA, we are not taking action on 326 IAC 2–2–1(uu)(5).

IV. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

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

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

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

Regulatory Flexibility Act

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

Unfunded Mandates Reform Act

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

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

Executive Order 13132: Federalism

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

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

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

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

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

Congressional Review Act

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

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 17, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 31, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(181) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(181) On September 2, 2004, Indiana submitted modifications to its Prevention of Significant Deterioration and nonattainment New Source Review rules as a revision to the state implementation plan. On October 25, 2005, and January 17, 2007, Indiana submitted revisions to the September 2, 2004 submittal.

(i) Incorporation by reference.

(A) Title 326 of the Indiana Administrative Code, Rules 2–1.1–7, 2–2–1(a) through (l), 2–2–1(n) through (kk), 2–2–1(mm) through (tt), 2–2–1(uu)(1) through (4), 2–2–1(vv) through (aaa), 2–2–2(a) through (d)(4), 2–2–2(d)(6) through (e), 2–2–2(g) through (i), 2–2–3, 2–2–4, 2–2–5(a), 2–2–5(c) through (e), 2–2–6, 2–2–8, 2–2.4, 2–3–1(a) through (i), 2–3–1(k) through (ff), 2–3–1(hh) through (uu), 2–3–2(a) through (c)(4), 2–3–2(c)(6) through (k), 2–3–2(m), 2–3–3(a) through (b)(11), 2–3–3(b)(14), 2–3.4, 2–5.1–4. Filed with the Secretary of State on August 10, 2004, effective September 10, 2004. Published in the Indiana Register on September 1, 2004 (27 IR 3887).

[FR Doc. E7–11571 Filed 6–15–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0619; FRL–8327–3]

Revisions to the Nevada State Implementation Plan, Washoe County District Health Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Washoe County District Health Department (WCDHD) portion of the Nevada State Implementation Plan (SIP). These revisions concern opacity, emissions of carbon monoxide (CO) and particulate matter (PM) from wood stoves and fireplaces, and air emergency episode plans. We are approving local rules that help regulate emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on August 17, 2007 without further notice, unless EPA receives adverse comments by July 18, 2007. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0619, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
- *E-mail: steckel.andrew@epa.gov.*
- *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Al Petersen, EPA Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the new or amended rules we are approving with the date that the rules were adopted by the WCDHD and were submitted by the Nevada Division of Environmental Protection (NDEP).

TABLE 1.—RULES SUBMITTED

Agency	Rule No.	Rule title	Adopted or revised	Submitted
WCDHD	010.117	Definitions—"Pellet Stove"	02/23/06 Revised	05/05/06
WCDHD	040.005	Visible Air Contaminants	02/23/06 Revised	05/05/06
WCDHD	040.051	Wood Stove/Fireplace Insert Emissions	02/23/06 Revised	05/05/06
WCDHD	050.001	Emergency Episode Plan	03/23/06 Adopted	05/05/06

On November 4, 2006, the submittal of May 5, 2006 was found by operation of law to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are there other versions of the rules?

We approved a version of WCDHD Rule 040.005 into the SIP on July 27, 1972 (37 FR 15080).

We approved a version of WCDHD Rule 050.001 into the SIP as Rules 060.005, 060.030, 060.035, 060.040, 060.045, 060.050, 060.055, and 060.060 on July 27, 1972 (37 FR 15080). Submitted Rule 050.001 does not contain provisions that substantively relate to 060.010, 060.015, 060.020, or 060.025. Thus, those provisions would remain in the applicable SIP after approval of Rule 050.001. Approval of 050.001 would supersede the other 8 rules in the 050-series that we approved in 1972.

There is no version of WCDHD Rules 010.117 or 040.051 in the SIP.

C. What are the purposes of the submitted rule and rule revisions?

Section 110(a) of the Clean Air Act (CAA) requires states to submit regulations that control volatile organic compounds, nitrogen oxides, particulate matter, sulfur oxides, and other air pollutants which harm human health and the environment. The rules were developed as part of the Washoe County District Board of Health's program to control these pollutants.

The purpose of Rule 010.117 is to define ''pellet stove'' for use in the rules below.

The purpose of Rule 040.005 is to limit visible emissions from stationary sources.

- The revised rule has a format change and two references added for clarity.

The purpose of Rule 040.051 is to limit particulate matter and other pollutants (such as carbon monoxide) discharged into the ambient air from solid fuel burning devices. Rule 040.051 would be a new rule in the SIP but was adopted locally several years ago and revised a number of times since then. The general purposes of the latest revision by Washoe County to Rule 040.051 are to strengthen and to clarify the requirements of the rule. Notable elements of Rule 040.051 are as follows:

- The rule provides 21 definitions for clarity.
- The rule requires a PM emission standard for non-catalytic appliances of 7.5 grams PM per hour and a PM emission standard for catalytic appliances of 4.1 grams PM per hour.
- The rule requires that existing non-certified wood stoves must be removed or replaced with certified wood stoves or low emission devices upon property sale or transfer.

Antique wood stoves could be exempted by the Control Officer on a case-by-case basis.

- The rule allows, if a property is undergoing renovation without change of ownership, the existing wood stove to be moved and re-installed or the same type of fireplace to be rebuilt.
- The rule prohibits visible emissions from a chimney from exceeding No. 2 on the Ringlemann chart (40% opacity), except for a 15-minute startup period.
- The rule provides a list of 12 prohibited fuels for use in solid fuel burning devices.
- The rule allows wood less than 20% moisture to be sold for immediate use; wood over 20% moisture may be sold, providing a seasoning period to achieve 20% moisture is recommended to the buyer.
- The rule allows no more than one certified wood stove or fireplace per acre to be installed in new construction.
- The rule prohibits the installation of additional solid fuel burning devices in existing dwelling units or commercial/public property.
- The rule provides various administrative requirements in order to enforce the standards in the rule, including qualifications and duties of a Wood Stove Inspector.

The purpose of Rule 050.001 is to prevent the excessive buildup of air pollutants by recognizing atmospheric conditions conducive to such buildup and initiating effective remedial actions before the concentrations can build to unhealthy levels. Notable changes relative to the existing SIP include:

- The rule includes new definitions that clarify the meaning of the rule's provisions.
- The rule includes substantially more protective episode criteria levels for carbon monoxide (CO) and ozone compared to the existing SIP and includes episode criteria levels for two pollutants, PM_{10} and $PM_{2.5}$, that are not included in the corresponding provision in the existing SIP.
- The rule no longer includes episode criteria level for sulfur dioxide, nitrogen dioxide, and hydrocarbons.
- The rule updates the list of entities to be notified in the event of an alert.
- The rule includes additional control actions to be taken upon declaration of different stages (such as the suspension of operation of any solid fuel burning device upon the declaration of a stage 1 alert for CO, PM_{10} or $PM_{2.5}$).

EPA's technical support documents (TSDs) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). The WCDHD regulates a serious PM–10 nonattainment area where significant sources of PM–10 must fulfill the requirements of Best Available Control Measures (BACM), including Best Available Control Technology (BACT) (see section 189(b)). Rule 040.005 regulates significant source categories and must fulfill the requirements of BACM/BACT. Rule 040.051 regulates a significant source category of PM–10 according to the *Revisions to the PM–10 State Implementation Plan for the Truckee Meadows Air Basin* (August 2002) (2002

Plan) and must fulfill the requirements of BACM/BACT.

Guidance and policy documents that we used to help evaluate specific enforceability and BACM/BACT requirements consistently include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *PM–10 Guideline Document* (EPA–452/R–93–008).
- *Technical Information Document for Residential Wood Combustion Best Available Control Measures* (EPA–450/2–92–002).
- *Minimum BACM/RACM Control Measures for Residential Wood Combustion Rules*, EPA Region IX (March 22, 2007).

B. Do the rules meet the evaluation criteria?

We believe the rules are consistent with the relevant EPA rules, policy, and guidance regarding enforceability, SIP relaxations, BACM/BACT, and emergency episode plans. Specifically, we find amended WCDHD Rule 040.005 to be acceptable because it meets BACM, is relied upon in both the PM–10 and CO plans for Truckee Meadows, and is reasonably enforceable. We find the amended emergency episode plan recodified as WCDHD Rule 050.001 to be acceptable because it meets the applicable requirements for such plans in 40 CFR part 52, subpart H, is an improvement over the related existing SIP, and is relied upon by the PM–10 and CO plans for Truckee Meadows.

The TSDs have more information on our evaluation.

C. Public comment and final action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted WCDHD Rules 010.117, 040.005, 040.051, and 050.001 because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by July 18, 2007, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on August 17, 2007. This will incorporate these rules into the federally enforceable SIP.

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

III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 17, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Particulate

matter, Reporting and recordkeeping requirements.

Dated: May 9, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart DD—Nevada

■ 2. Section 52.1470 is amended by adding paragraph (c)(63) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(63) New or amended regulations were submitted on May 5, 2006, by the Governor's designee.

(i) Incorporation by reference.

(A) Washoe County District Health Department.

(*1*) Rules 010.117, 040.005, and 040.051, revised on February 23, 2006, and Rule 050.001, adopted on March 23, 2006.

[FR Doc. E7–11578 Filed 6–15–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2006–0930; A–1–FRL–8327–9]

Approval of Implementation Plan; Connecticut; Commitment to Submit Mid-Course Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of commitment fulfillment.

SUMMARY: Notice is hereby given that the State of Connecticut has fulfilled the enforceable commitments it made to EPA to complete a mid-course review (MCR) assessing whether two one-hour ozone nonattainment areas are, or are not, making sufficient progress toward attainment of the one-hour ozone standard under the Clean Air Act (CAA). The two areas are the Connecticut portion of the New York-Northern New Jersey-Long Island 1-hour ozone nonattainment area, and the Greater Connecticut 1-hour ozone nonattainment area. EPA has reviewed the MCR documents submitted by Connecticut and has determined that Connecticut has met the commitment to perform these MCRs. EPA has sent a letter to Connecticut finding that their MCRs fulfill the commitment made by Connecticut in their 1-hour ozone attainment demonstrations.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2006–0930. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1664.

SUPPLEMENTARY INFORMATION:

I. General Information

EPA's findings letter and Technical support Document (TSD) and the State's mid-course review (MCR) submittal are available at the Regional Office, which is identified in the **ADDRESSES** section above.

II. Further Information

A. Background

EPA's 1996 modeling guidance [1] recognized the need to perform a MCR as a means for addressing uncertainty in the modeling results. In its December 16, 1999 proposed rulemakings on the 1-hour ozone attainment demonstrations for ten ozone nonattainment areas (see one example at 64 FR 70348), EPA stated that because of the uncertainty in long-term projections, an attainment demonstration that relies on weight of evidence needs to contain provisions for periodic review of monitoring, emissions, and modeling data to assess the extent to which refinements to emission control measures are needed. In those December 16, 1999 proposed rulemakings, EPA set forth its framework for reviewing and processing 1-hour ozone attainment demonstrations and one element of that framework was a commitment for a MCR.

A MCR provides an opportunity for the state and EPA to assess if a nonattainment area is, or is not, making sufficient progress toward attainment of the one-hour ozone standard. The MCR should utilize air quality monitoring and other data to assess whether the control measures relied on in a SIP's attainment demonstration have resulted in adequate improvement of the ozone air quality. The EPA believes that a MCR is a critical element in any attainment demonstration that employs a long-term projection period and relies on a weight-of-evidence test. The commitment to perform a MCR was required before EPA would approve most 1-hour ozone attainment demonstrations. Moreover, even though the 1-hour ozone standard has been revoked by EPA (70 FR 44470, June 15, 2005), the anti-backsliding provisions of EPA's 8-hour ozone implementation rule (69 FR 23951, April 30, 2004) continue to require areas with outstanding commitments to perform a 1-hour MCR to do so.

The two 1-hour ozone nonattainment areas in Connecticut that are the subject of this notice are the Connecticut portion of the New York-Northern New Jersey-Long Island ozone nonattainment area and the Greater Connecticut 1-hour ozone nonattainment area. The one-hour attainment demonstration for the Connecticut portion of the New York-Northern New Jersey-Long Island ozone nonattainment area, with the commitment to perform a MCR, was approved in 66 FR 63921, published on December 11, 2001. This area also had an emissions shortfall. Connecticut adopted additional control measures to fill this shortfall. EPA approved these measures as fulfilling the shortfall in a previous rulemaking. See 71 FR 51761 (August 31, 2006). The one-hour attainment demonstration for the Greater Connecticut 1-hour ozone nonattainment area, with the commitment to perform a MCR, was approved in 66 FR 634, published on January 3, 2001.

[1] U.S. EPA (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–957–007, (June 1996), Web site: *http://www.epa.gov/ttn/scram/* (file name: ''O3TEST'').

B. MCR Guidance

On March 28, 2002, EPA issued a memorandum entitled ''Mid-Course Review Guidance for the 1-Hour Ozone Nonattainment Areas that Rely on Weight-of-Evidence for Attainment Demonstration.'' Attached to that memorandum is a technical guidance document dated January 2002 entitled ''Recommended Approach For Performing Mid-course Review of SIP's To Meet the 1-hour NAAQS for Ozone.'' *http://www.epa.gov/ttn/oarpg/t1/memoranda/policymem33d.pdf.*

The technical guidance contains three basic steps: (1) Perform an administrative test (e.g., demonstrate whether the appropriate emission limits were adopted and implemented); (2) analyze available air quality, meteorology, emissions and modeling data and document findings; and (3) document conclusions regarding whether progress toward attainment is being made using a weight of evidence determination (which may or may not include new modeling analyses).

C. Review of MCR Submittals from Connecticut

EPA reviewed the MCR documents Connecticut submitted for the two areas in Connecticut required to submit an MCR. The review compared the MCRs with EPA guidance. EPA concluded that the two MCRs meet EPA guidance and fulfill the commitment Connecticut made in their one-hour attainment demonstrations. Specifically, both of Connecticut's MCRs include an emission reduction regulation review, as well as a trend analysis and air quality monitoring data. A TSD with more detail on Connecticut's MCRs and EPA's review of these MCRs has been prepared and is available from EPA at the address provided in the **ADDRESSES** section above.

III. Final Action

EPA has reviewed the MCR documents submitted by Connecticut and has determined that Connecticut has adequately met its commitment to perform a MCR. This action is being taken for the following one-hour ozone nonattainment areas: The Connecticut portion of the New York-Northern New Jersey-Long Island ozone nonattainment area; and the Greater Connecticut 1-hour ozone nonattainment area.

EPA has sent a letter to Connecticut finding that their MCRs fulfill the commitment made by Connecticut in their 1-hour ozone attainment demonstrations. A copy of this letter is available from EPA at the address provided in the **ADDRESSES** section above.

IV. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

Dated: June 6, 2007.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. E7–11690 Filed 6–15–07; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 070330073–7116–02; I.D. 030507A]

RIN 0648–AU87

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quota Specifications and Effort Controls

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

ACTION: Final rule.

SUMMARY: NMFS announces the final rule to set 2007 fishing year specifications for the Atlantic bluefin tuna (BFT) fishery, including quotas for each of the established domestic fishing categories and effort controls for the General category and Angling category. This action is necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action also makes a minor administrative change to the permit regulations.

DATES: The rule is effective July 18, 2007, except that the General category retention limit found within the preamble of this rule is effective July 18, 2007 through August 31, 2007, and the Angling category retention limit found within the preamble of this rule is effective July 18, 2007 through December 31, 2007.

ADDRESSES: Supporting documents, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA), are available from Sarah McLaughlin, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, One Blackburn Drive, Gloucester, MA 01930. These documents are also available from the HMS Management Division website at *http://www.nmfs.noaa.gov/sfa/hms/* or at the Federal e-Rulemaking Portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and the ATCA. The ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and the ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). The consolidated FMP regulations are at 50 CFR part 635.

Background

Background information about the need for the BFT quota specifications and effort controls for the 2007 fishing year (June 1 through December 31, 2007) was provided in the preamble to the proposed rule (72 FR 16318, April 4, 2007), and is not repeated here. The proposed rule reflected landings information through January 15, 2007. Since that date, additional landings have occurred, resulting in a slight modification of the 2006 landings figures. Revised landings estimates (calculated as of April 30, 2007, and therefore preliminary) are as follows: General category -- 165.0 mt (an increase of 5.2 mt); Harpoon category -- 22.2 mt; Longline category -- 57.0 mt [an increase of 25.6 mt, i.e., 1 mt in the North, 0.7 mt in the Northeast Distant gear restricted area (NED), and 23.9 mt in the South]; Angling category -- 191.0 mt (an increase of 4.2 mt); Trap category -- 0 mt; and Purse Seine category -- 3.6 mt. These landings estimates, totaling 438.8 mt, indicate that the preliminary 2006 fishing year underharvest is 2,400.4 mt. However, as the underharvest from the 2006 fishing year is capped at 595.1 mt, these adjusted landings do not change the 2007 fishing year quotas.

2007 Final Quota Specifications

In accordance with the 2006 ICCAT quota recommendation, the Consolidated HMS FMP percentage shares for each of the domestic categories, and regulations regarding annual adjustments at § 635.27(a)(10), NMFS establishes final quota specifications for the 2007 fishing year as follows: General category -- 643.6 mt; Harpoon category -- 53.3 mt; Purse Seine category -- 254.1 mt; Angling category -- 269.2 mt; Longline category -- 200 mt; and Trap category -- 1.4 mt. Additionally, 207.6 mt are allocated to the Reserve category for inseason adjustments, scientific research collection, potential overharvest in any category except the Purse Seine category, and potential quota transfers.

Based on the above specifications and considerations regarding the school BFT fishery, the Angling category quota of 269.2 mt is further subdivided as follows: School BFT -- 119 mt, with 45.8 mt to the northern area (north of 39°18′ N. latitude), 51.2 mt to the southern area (south of 39°18′ N. latitude), and 22 mt held in reserve; large school/small medium BFT -- 144 mt, with 68 mt to the northern area and 76 mt to the southern area; and large medium/giant BFT -- 6.2 mt, with 2.1 mt to the northern area and 4.1 mt to the southern area.

The 2006 ICCAT recommendation includes an annual 25–mt set-aside quota to account for bycatch of BFT related to directed longline fisheries in the NED. This set-aside quota is in addition to the overall incidental longline quota to be subdivided in accordance with the North/South allocation percentages mentioned below. Thus, the Longline category quota of 200 mt is subdivided as follows: 80 mt to pelagic longline vessels landing BFT north of 31° N. latitude and 120 mt to pelagic longline vessels landing BFT south of 31° N. latitude, with 25 mt set-aside for bycatch of BFT related to directed pelagic longline fisheries in the NED.

General Category Effort Controls

NMFS implements General time-period subquotas to increase the likelihood that fishing would continue throughout the entire General category season. The subquotas are consistent with the objectives of the Consolidated HMS FMP and are designed to address concerns regarding the allocation of fishing opportunities, to assist with distribution and achievement of optimum yield, to allow for a late season fishery, and to improve market conditions and scientific monitoring.

The regulations implementing the Consolidated HMS FMP divide the annual General category quota into five time-period subquotas as follows: 50 percent for June-August, 26.5 percent for September, 13 percent for October-November, 5.2 percent for December, and 5.3 percent for January. Because the fishing year is changing back to a calendar year effective January 1, 2008, NMFS is distributing the 5.3 percent of the General category quota that would be assigned to the January time period to the four time periods that will occur during the 2007 fishing year. Accordingly, the available 643.6–mt coastwide quota is divided as follows: 339.8 mt for the period beginning June 1 and ending August 31, 2007; 180.1 mt for the period beginning September 1 and ending September 30, 2007; 88.4 mt for the period beginning October 1 and ending November 30, 2007; and 35.3 mt for the period beginning December 1 and ending December 31, 2007. The January 2008 subquota will be included in the 2008 specifications, which NMFS plans to publish prior to the start of the fishing year on January 1, 2008. As discussed in the Consolidated HMS FMP, NMFS plans to work with the affected constituents through the 2008 specifications process to determine the most appropriate disposition of any under- or overharvest that has accrued in the General category by the end of December 2007.

In addition to time-period subquotas, NMFS also implements General category restricted fishing days (RFDs) to extend the General category fishing season. The RFDs are designed to address the same issues addressed by time-period subquotas and provide additional inseason management flexibility. Although the General category has a relatively large quota for the 2007 fishing year, this permit category has the ability to harvest a great amount of quota in a short period of time, and the RFDs are necessary as a way to manage effort in the subperiods at the end of the fishing year. Therefore, NMFS establishes a series of RFDs for the 2007 fishing year to extend the BFT fishery for the General category for as long as possible during the October through December time period. Persons

aboard vessels permitted in the General category are prohibited from fishing (including catch-and-release and tag-and-release) for BFT of all sizes on the following days while the fishery is open: all Saturdays and Sundays from November 17, 2007, through December 31, 2007, plus November 22 and December 25, 2007. NMFS implements these RFDs to improve fishing opportunities during the October through December time period without increasing BFT mortality. NMFS may consider waiving the RFDs if the pace of landings indicates that the November and/or December General category subquotas will not be met by the end of the associated subperiod. NMFS' intention is to propose RFDs for January 2008 as part of the 2008 quota specifications and effort controls, scheduled to be published before January 1, 2008.

Because of the large quota available for the General category, NMFS increases the retention limit of BFT for the first subperiod of the General category fishery. Therefore, persons aboard vessels permitted in the General category may retain three large medium or giant BFT (measuring 73 inches (185.4 cm) or greater) per vessel per day/trip from the effective date of this final rule through August 31, 2007. This BFT retention limit may be extended via inseason action, if warranted, under § 635.23(a)(4).

Angling Category Effort Controls

This final rule establishes an Angling category retention limit of one school BFT (27 inches (68.6 cm) to less than 47 inches (119.4 cm)), and two large school/small medium BFT (i.e., two BFT measuring 47 inches (119.4 cm) to less than 73 inches (185.4 cm)) per vessel. This retention limit is effective for persons aboard vessels permitted in the Angling category from the effective date of this rule through December 31, 2007. This retention limit may be changed via inseason action, if warranted, under § 635.23(b)(3).

Permit Category Changes

Because of the scheduled change to a calendar year fishing year beginning January 1, 2008, and because Atlantic Tunas, HMS Charter/Headboat, and HMS Angling category permits issued for the 2007 fishing year are effective through December 31, 2008, NMFS will allow permit holders to make a permit category change for the 2008 fishing year, i.e., once during the period of January 1, 2008, through May 31, 2008.

Comments and Responses

Below, NMFS summarizes and responds to all comments received on the proposed quota specifications and effort controls for the General and Angling categories. In addition, NMFS received comments on issues that were not considered part of this rulemaking. For example, NMFS received a request to relax all General category restrictions, including season duration and minimum size. Conversely, NMFS received several comments that, noting the overfished status of the stock, requested reduction of the U.S. BFT quota and commercial and recreational retention limits in general, an increase to the recreational minimum size, and prohibition of purse seine use due to bycatch concerns. While NMFS acknowledges that consideration of these concerns is important, these issues are not addressed in this action because they were not considered part of this rulemaking.

A. BFT Quotas

Comment 1: NMFS received a range of comments on the quota specifications. Some commenters supported the quotas as proposed. Others requested that NMFS distribute the underharvest carryover amount (595 mt) according to FMP percentages rather than as proposed. One commenter urged NMFS to set the Reserve at 40.7 mt, i.e., 2.5 percent of the adjusted U.S. quota and stated that unused Reserve should not be carried forward to the Reserve for the following fishing year. One commenter felt that underharvest should not be added to the following year's BFT quota given stock concerns and potential underreporting of landings.

Response: The specifications included in this rule reflect appropriate distribution of the underharvest allowed to be carried forward for the 2007 fishing year. Such distribution provides for several existing and potential management needs, namely: (1) Setting aside sufficient quota for a potential transfer to another ICCAT Contracting Party, if warranted; (2) providing sufficient quota for pelagic longline operations; (3) appropriately accounting for dead discards; and (4) distributing the remainder per the Consolidated HMS FMP allocation percentages. NMFS allocates 2.5 percent of the baseline 2007 U.S. quota in the Reserve, consistent with the Consolidated HMS FMP. The rollover of quota in the Reserve from one year to the next (rather than reallocation of the unused Reserve to one or more quota categories) allows NMFS to consider several factors (as established in § 635.27(a)(8)), within the fishing year, prior to making quota adjustments from the Reserve. The regulations regarding annual adjustment of the BFT quota at § 635.27(a)(10) provide NMFS the flexibility to apply the underharvest to the overall quota for the following fishing year, provided that the total of the adjusted category quotas and the Reserve is consistent with the ICCAT recommendation.

Comment 2: One commenter opposed allocation of 40 percent of the carryover amount to the Longline category, indicating such action is inappropriate given that the longline fishery incidentally catches BFT.

Response: The application of 236.6 mt of the 2006 underharvest to the Longline category quota is conducted for two reasons: (1) To provide sufficient quota for the subtraction of past longline dead discards; and (2) to provide for the continued operation of the Longline category vessels during the 2007 fishing year, including anticipated future dead discards as well as allowed incidental landings under current retention limits. The TAC for each Contracting Party is now inclusive of dead discards. The 2006 ICCAT recommendation changed the accounting practices for dead discards by eliminating an additional dead discard allowance, and, therefore, NMFS must deduct the best estimate of dead discards from the fishing year quota. As these dead discards are attributed to the pelagic longline fishery, the dead discards are specifically deducted from the Longline category quota. Furthermore, distribution of the carryover amount by the FMP percentages would result in 48.2 mt added to the baseline amount (94.4 mt), for a total of 142.6 mt for the Longline category for the 2007 fishing year. After accounting for an estimated amount of dead discards (i.e., approximately 131 mt, assuming the amount is similar to the most recent available estimate), the quota for the Longline category would be 11.6 mt. This quota would not provide a sufficient amount of quota to allow for the legal landing of BFT taken incidental to catches of swordfish and other tunas.

Comment 3: Some commenters opposed the potential transfer of U.S. quota to other ICCAT Contracting Parties. One commenter specifically objected to the use of the Reserve in making such a transfer to any ICCAT Contracting Party with an allocation. This commenter's understanding of the agreement at ICCAT was that the transfer to a specific Contracting Party could be undertaken at the request of industry, using the quota associated with that industry.

Response: The 2006 ICCAT recommendation allows the United States to transfer up to 15 percent of its TAC, consistent with domestic obligations and conservation considerations. Before considering a possible quota transfer, the United States, through NMFS, would evaluate several factors, including the projected ability of U.S. vessels to harvest the U.S. TAC during the fishing year, and potential impacts to the stock. The United States would need to explore and analyze these factors prior to transferring quota through a separate action. In this action, NMFS is placing 178.5 mt (15 percent of the U.S. TAC) in the Reserve so that, if the United States were to approve a transfer, the quota could be from the Reserve and not from category-specific quotas.

B. General Category Effort Controls

Comment 1: NMFS received comments on the General category retention limit that ranged from support for the proposed three-BFT limit to a request for a zero-BFT limit.

Response: The regulations allow NMFS to adjust the General category retention limit of large medium and giant BFT over a range of zero (on RFDs) to three. Given the low early season harvest rate in recent years, NMFS is setting the June through August retention limit at three BFT to allow General category fishermen the maximum harvest of BFT possible while keeping within the quota of the first General category subperiod.

Comment 2: NMFS received a comment that the setting of RFDs for the 2007 fishing year may be an unnecessary administrative effort given the low harvest rate in recent years.

Response: NMFS sets the RFDs in this action to ensure that the agency has the flexibility to manage the pace of the fishery should the need arise. If NMFS determines during the fishing season that the November and December RFDs are not necessary, NMFS will take the appropriate inseason action to waive them.

C. Angling Category Effort Controls

Comment 1: NMFS received comments on the Angling category effort controls that were supportive of the retention limit and season as proposed. NMFS received comments from a recreational fishing organization that supported the retention limits as proposed, but requested a fishing season of June 21 through December 31. Some commenters requested an increased retention limit for school BFT during specific time periods, due to the importance of catching school BFT in the charter fishing sector and in fishing tournaments. One commenter requested that NMFS shorten the school BFT fishing season by approximately two months.

Response: NMFS has considered adjustment of the retention limits for certain time periods as implemented for 2006. However, based on the large number of comments received that supported the proposed retention limits, an evaluation of retention limits and landings estimates over recent years, and the ICCAT recommendation that Contracting Parties not exceed the tolerance of school BFT over the 2007–2010 period, NMFS is setting the Angling category retention limit at one school BFT and two large school/small medium BFT per vessel per day/trip from the effective date of the final rule through the end of the fishing year.

Comment 2: Several commenters expressed concern about implementing a higher BFT retention limit, particularly for school BFT, because of the overfished nature of the western Atlantic BFT stock and because ICCAT recommends a ''tolerance'' on school BFT landings rather than a targeted fishery.

Response: NMFS agrees that the school BFT retention limit should be no more than one fish for the 2007 fishing year to ensure that landings are within the ICCAT-recommended 10-percent limit.

Classification

NMFS publishes these final specifications and effort controls under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries (AA) has determined that the regulations contained in this final rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic HMS fisheries, and are consistent with the Magnuson-Stevens Act and its National Standards.

This final rule been determined to be not significant for purposes of Executive Order 12866.

In compliance with Section 604 of the Regulatory Flexibility Act, a Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule. The FRFA analyzes the anticipated economic impacts of the preferred actions and any significant alternatives that could minimize economic impacts on small entities. Each of the statutory requirements of Section 604 of the Regulatory Flexibility Act has been addressed and a summary of the FRFA is below. The full FRFA and analysis of economic and ecological impacts, are available from NMFS (see **ADDRESSES**).

Section 604(a)(1) of the Regulatory Flexibility Act requires the Agency to state the objective and need for the rule. As stated earlier, the objective of this rule is to set BFT quotas and effort controls for the General and Angling categories for the 2007 fishing year consistent with the Consolidated HMS FMP. This rule is needed to implement ICCAT recommendations pursuant to ATCA and to achieve domestic management objectives under the Magnuson-Stevens Act.

Section 604(a)(2) of the Regulatory Flexibility Act requires the Agency to summarize significant issues raised by the public comment in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of the Agency's assessment of such issues, and a statement of any changes made as a result of the comments. NMFS received one comment specifically on the IRFA. The commenter wrote that the 2006 annual gross revenues ($3.4 million), if applied to the 8,751 commercially permitted vessels, would average less than $400 per vessel. The commenter felt that this must be an error given the expenses involved with fishing for BFT. The gross revenues presented in the analysis (which was updated for this final rule) represent the total of recorded sales of BFT in all commercial categories. NMFS agrees that the 2006 gross revenues were low and, for the General and Harpoon categories, were the lowest in over 10 years. However, availability of BFT to the commercial sector has been low in recent years, and many commercial participants are not solely dependent on BFT for fishing revenues. In addition, NMFS received two comments (one from an individual angler and one from an organization representing recreational anglers, the charter sector, and supporting industries) requesting an increased retention limit for BFT during certain windows of time due to the importance of school BFT to the charter sector and/or during tournaments. NMFS has considered this comment, as well as the many comments supporting the retention limits as proposed. NMFS finalizes the retention limit of one school BFT and two large school/small medium BFT per vessel per day/trip to ensure that the ICCAT-recommended tolerance of school BFT is not exceeded over the 2007–2010 period while allowing continued access to this fishery.

Section 604(a)(3) of the Regulatory Flexibility Act requires the Agency to describe and provide an estimate of the number of small entities to which the rule will apply. The final action could directly affect the 35,075 vessel owners

permitted in the HMS Angling category, the HMS Charter/Headboat category permit holders, or the Atlantic tunas commercial permit categories (General, Harpoon, Purse Seine, Longline, and Trap categories). Of these, 9,001 permit holders (the combined number of commercial category permit holders) are considered small business entities according to the Small Business Administration's standard for defining a small entity.

Section 604(a)(4) of the Regulatory Flexibility Act requires the Agency to describe the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements of the report or record. None of the alternatives considered for this final rule would result in additional reporting, recordkeeping, and compliance requirements.

Section 604(a)(5) of the Regulatory Flexibility Act requires the Agency to describe the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)(4)) lists four general categories of ''significant'' alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this final rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities, because all of the affected businesses (commercial vessel permit holders) are considered small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. In addition, none of the alternatives considered would result in additional reporting or compliance requirements (category two above). NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act.

As described below, NMFS analyzed several alternatives in this final rulemaking and provides justification for selection of the preferred alternatives to achieve the desired objective.

NMFS has estimated the average impact that the alternative to establish the 2007 BFT quota for all domestic fishing categories would have on individual categories and the vessels within those categories.

As mentioned above, the 2006 ICCAT recommendation reduced the U.S. BFT TAC to 1,190.12 mt, which is distributed to the domestic fishing categories based on the allocation percentages established in the Consolidated HMS FMP. This quota allocation includes a set-aside quota of 25 mt to account for incidental catch of BFT related to directed longline swordfish and non-BFT tuna fisheries in the NED.

In 2006, the annual gross revenues from the commercial BFT fishery were approximately $3.3 million. Approximately 9,000 vessels are permitted to land and sell BFT under four commercial BFT quota categories (including charter/headboat vessels). The commercial categories and their 2006 gross revenues are General ($2.4 million), Harpoon ($265,951), Purse Seine ($33,819), and Longline ($588,828). The FRFA assumes that vessels within a category will have similar catch and gross revenues in order to consider the relative impact of the final action on vessels. Data on net revenues of individual fishermen are lacking, so the economic impact of the alternatives is averaged across each category. More specifically, available landings data (weight and ex-vessel value of the fish in price/pound) allow NMFS to calculate the gross revenue earned by a fishery participant on a successful trip. The available data do not, however, allow NMFS to calculate the effort and cost associated with each successful trip (e.g., the cost of gas, bait, ice, etc.) so net revenue for each participant cannot be calculated. NMFS cannot determine whether net revenue varies among individual fishery participants within each category, and therefore whether the economic impact of a regulation would have a varying impact among individual participants. As a result, NMFS analyzes the average impact of the proposed alternatives among all participants in each category.

For the allocation of BFT quota among domestic fishing categories, NMFS analyzed a no action alternative (A1) and the preferred alternative (A2), which would implement the 2006 ICCAT recommendation. NMFS considered a third alternative (A3), which would allocate the 2006 ICCAT-recommended quota in a manner other than that designated in the Consolidated HMS FMP. However, since Alternative A3 would result in a de facto quota reallocation among categories, and an FMP amendment would be necessary for its implementation, NMFS did not further analyze it. Per the Consolidated HMS FMP, NMFS prepares quota specifications annually for the upcoming fishing year. Preparation of an FMP amendment would not be possible in the brief period of time between receipt of the ICCAT recommendation, which occurred in late November 2006, and the start of the 2007 fishing year on June 1, 2007. Therefore, analysis of the impacts of Alternative A3 is not available. But, if an FMP amendment was feasible, positive economic impacts would be expected to result on average for vessels in permit categories that would receive a greater share than established in the FMP, and negative economic impacts would be expected to result on average for vessels in permit categories that would receive a lesser share than established in the FMP. Impacts per vessel would depend on the temporal and spatial availability of BFT to participants.

As noted above, the preferred alternative (A2) would implement the 2006 ICCAT recommendation in accordance with the Consolidated HMS FMP and consistent with the ATCA, under which the United States is obligated to implement ICCAT-approved quota recommendations. Alternative A2 would have slightly positive impacts for fishermen. The no action alternative (A1) would keep the quota at pre–2006 ICCAT recommendation levels (approximately 300 mt more) and would not be consistent with the purpose and need for this action and the Consolidated HMS FMP. It would maintain economic impacts to the United States and to local economies at a distribution and scale similar to 2006 or recent prior years, and would provide fishermen additional fishing opportunities, subject to the availability of BFT to the fishery. For these reasons, NMFS selects the preferred alternative (A1).

The preferred alternative also would implement the provision of the 2006 ICCAT recommendation that limits school BFT landings to 10 percent of the U.S. TAC, calculated on a four-year average. This is expected to have neutral impacts on fishermen who fish for school BFT, particularly those who rely exclusively on the school size class for BFT harvest, since the available quota is the same as the level when the limit was

8–percent of the U.S. TAC under the 2002 ICCAT recommendation.

Two alternatives were considered for effort control using RFDs in the General category. The no action alternative would not implement any RFDs with publication of the specifications but rather would use inseason management authority established in the Consolidated HMS FMP to implement RFDs during the season. This alternative could be most beneficial during a season of low catch rates and could have positive economic consequences if slow catch rates were to persist during the late season fishery, as General category participants would be able to fish every day while the fishery is open. During a slow season, fishermen could choose when to fish or not based on their own preferences. However, these positive economic effects may not be realized because it is impossible for NMFS to predict in advance whether the BFT fishing season will have low or high catch rates.

The preferred alternative would designate RFDs according to a schedule published in the BFT specifications. NMFS has used RFDs to avoid oversupplying the market with BFT and extending the fishing season as late as possible. In addition, establishing RFDs at the season onset provides better planning opportunities than implementing RFDs during the season, since charter/headboat businesses could book trips and recreational and commercial fishermen could make plans ahead of time rather than waiting until the last minute to see if an RFD is going to be implemented. However, implementing RFDs to extend the late season may have some negative economic impacts to fishermen fishing in northern Atlantic states who choose to travel to fish off southern states during the late season fishery. Travel and lodging costs may be greater if the season were extended over a greater period of time under the selected alternative. Those additional costs could be mitigated if the ex-vessel price of BFT stays high, as is intended under this alternative. Without RFDs, travel costs may be less because of a shorter season; however, the market could be oversupplied and ex-vessel prices could fall. Overall, extending the season as late as possible and establishing formalized RFDs at the season onset would enhance the likelihood of increasing participation by fishermen in southern states, increase access to the fishery over a greater range of the fish migration, provide a reliable mechanism for slowing a fishery that has an ability to generate extremely high catch rates, and is expected to provide better than average ex-vessel prices with an overall increase in gross revenues. For these reasons, NMFS selects the preferred alternative over the no action alternative.

A retention limit of three BFT (measuring 73 inches (185.4 cm) or greater per vessel per day/trip) is the preferred alternative for the opening retention limit for the General category, which would be in effect through August 31, 2007. This alternative is expected to result in the most positive socio-economic impacts by providing the best opportunity to harvest the quota while avoiding oversupplying the market, thus maximizing gross revenues. Thus, this alternative was selected over other alternatives considered, i.e., the no action alternative (one BFT measuring 73 inches or greater per vessel per day/trip) and a retention limit of two BFT (73 inches or greater per vessel per day/trip). Both of the non-selected alternatives are expected to be too restrictive given the large amount of quota available for the General category during the 2007 fishing year and could result in the negative economic impact of lower gross revenues. Although early season landings seldom occur at a rate that could oversupply the market, NMFS will monitor landings closely to ensure that the increased retention limit does not contribute to an oversupply.

Six alternatives were considered for Angling category retention limits for the 2007 fishing year. The selected alternative (D1b) is a three BFT retention limit (two fish measuring 47 inches (119.4 cm) to less than 73 inches (185.4 cm) and one fish measuring 27 inches (68.6 cm) to less than 73 inches) per vessel per day/trip for all sectors of the Angling category for the entire 2007 fishing year. The other two alternatives providing the same daily retention limits (per vessel) for both private recreational and charter/headboats were the no action alternative (D1a, i.e., one fish measuring 27 inches to less than 73 inches) and Alternative D1c (two fish measuring 47 inches to less than 73 inches and two fish measuring 27 inches to less than 73 inches). Alternative D1a was not selected because it could unnecessarily restrict the amount of Angling category landings which could result in an underharvest of the quota and a negative economic impact. Alternative D1c was not selected because it could result in an overharvest of the quota, with negative economic consequences.

Three other alternatives were considered that would provide different retention limits for the Angling category sectors. The first (D2a) would allow a private vessel daily retention limit of three fish (two measuring 47 inches to less than 73 inches and one measuring 27 inches to less than 47 inches) and a charter/headboat daily retention limit (per vessel) of five fish (three fish measuring 47 inches to less than 73 inches and two fish measuring 27 inches to less than 47 inches). The second alternative (D2b) would allow three fish (two measuring 47 inches to less than 73 inches and one measuring 27 inches to less than 47 inches) for each vessel per day/trip for the season, with an increase to five fish (three measuring 47 inches to less than 73 inches and two measuring 27 inches to less than 47 inches) per vessel for charter/headboats during June 15, 2007 through July 31, 2007, and the month of September 2007. The third alternative (D2c) would allow two fish (measuring 27 inches to less than 73 inches) less than 47 inches) for each vessel per day/trip for the season, with an increase to three fish (measuring 27 inches to less than 73 inches) per vessel for charter/headboats during June 15, 2007 through July 31, 2007, and the month of September 2007. Alternatives D2a and D2b were not selected because they were considered to be potentially too liberal with a greater potential for exceeding the Angling category quota for 2007. Alternative D2c was not selected because it was considered to be unnecessarily restrictive, with a greater potential for negative economic impacts associated with not harvesting the entire quota. In addition, the D2 subalternatives were not selected since they could result in perceived inequities between the two sectors of the Angling category fishery, i.e., due to potential greater fishing opportunities for charter/headboat anglers than for private vessel anglers.

Alternative D1b was selected because it would allow the landing of the Angling category quota without overharvesting it, provide sufficient retention limits to offset costs, reduce any perceived inequities between the charter/headboat and private recreational vessel sectors of the Angling category fishery, and provide economic benefits to all regional sectors of the fishery.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: June 11, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635 ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.4, paragraph (j)(3) is revised to read as follows:

§ 635.4 Permits and fees.

* * * * *

(j) * * *

(3) A vessel owner issued an Atlantic tunas permit in the General, Harpoon, or Trap category or an Atlantic HMS permit in the Angling or Charter/Headboat category under paragraph (b), (c), or (d) of this section may change the category of the vessel permit once within 10 calendar days of the date of issuance of the permit. After 10 calendar days from the date of issuance of the permit, the vessel owner may not change the permit category until the following fishing season, except during the period of January 1, 2008, through May 31, 2008, when one additional change is authorized.

* * * * *

■ 3. In § 635.27, paragraphs (a) introductory text, (a)(1) heading, (a)(1)(i), (a)(2), (a)(3), (a)(4)(i), (a)(5), (a)(6), (a)(7)(i), (a)(7)(ii), (a)(10)(iii), and (a)(10)(iv) are revised to read as follows:

§ 635.27 Quotas.

(a) *BFT*. Consistent with ICCAT recommendations, and with paragraph (a)(10)(iv) of this section, NMFS may subtract the most recent, complete, and available estimate of dead discards from the annual U.S. BFT quota, and make the remainder available to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The remaining baseline annual U.S. BFT quota will be allocated among the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories. BFT may be taken by persons aboard vessels issued Atlantic Tunas permits, HMS Angling permits, or HMS Charter/Headboat permits. The baseline annual U.S. BFT quota is 1,165.1 mt, not including an additional annual 25 mt allocation provided in paragraph (a)(3) of this section. Allocations of the baseline annual U.S. BFT quota are: General - 47.1 percent (548.8 mt); Angling - 19.7 percent (229.5 mt), which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent (45.4 mt); Purse Seine - 18.6 percent (216.7 mt); Longline - 8.1 percent (94.4 mt), which does not include the additional annual 25 mt allocation provided in paragraph (a)(3) of this section; and Trap - 0.1 percent (1.2 mt). The remaining 2.5 percent (29.1 mt) of the baseline annual U.S. BFT quota will be held in reserve for inseason or annual adjustments based on the criteria in paragraph (a)(8) of this section. NMFS may apportion a quota allocated to any category to specified fishing periods or to geographic areas and will make annual adjustments to quotas, as specified in paragraph (a)(10) of this section. BFT quotas are specified in whole weight.

(1) *General category quota*. * * *

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category quota in accordance with § 635.23(c)(3). The amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold under the General category quota is 47.1 percent (548.8 mt) of the baseline annual U.S. BFT quota, and is apportioned as follows:

(A) January 1 through January 31 - 5.3 percent (29.1 mt);

(B) June 1 through August 31 - 50 percent (274.4 mt);

(C) September 1 through September 30 - 26.5 percent (145.4 mt);

(D) October 1 through November 30 - 13 percent (71.3 mt); and

(E) December 1 through December 31 - 5.2 percent (28.5 mt).

* * * * *

(2) *Angling category quota*. In accordance with the framework procedures of the HMS FMP, prior to each fishing year or as early as feasible, NMFS will establish the Angling category daily retention limits. The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 19.7 percent (229.5 mt) of the baseline annual U.S. BFT quota. No more than 2.3 percent (5.3 mt) of the annual Angling category quota may be large medium or giant BFT. In addition, over each 4 consecutive-year period (starting in 2007, inclusive), no more than 10 percent of the annual U.S. BFT quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school BFT. The Angling category quota includes the amount of school BFT held in reserve under paragraph (a)(7)(ii) of this section. The size class subquotas for BFT are further subdivided as follows:

(i) After adjustment for the school BFT quota held in reserve (under paragraph (a)(7)(ii) of this section), 52.8 percent (51.2 mt) of the school BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining school BFT Angling category quota (45.8 mt) may be caught, retained, possessed or landed north of 39°18′ N. lat.

(ii) An amount equal to 52.8 percent (55.6 mt) of the large school/small medium BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining large school/small medium BFT Angling category quota (49.6 mt) may be caught, retained, possessed or landed north of 39°18′ N. lat.

(iii) An amount equal to 66.7 percent (3.5 mt) of the large medium and giant BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining large medium and giant BFT Angling category quota (1.8 mt) may be caught, retained, possessed or landed north of 39°18′ N. lat.

(3) *Longline category quota*. The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels that possess Longline category Atlantic Tunas permits is 8.1 percent (94.4 mt) of the baseline annual U.S. BFT quota. No more than 60.0 percent of the Longline category quota may be allocated for landing in the area south of 31°00′ N. lat. In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant gear restricted area as specified at § 635.23 (f)(3).

(4) * * *

(i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels that possess Purse Seine category Atlantic Tunas permits is 18.6 percent (216.7 mt) of the baseline annual U.S. BFT quota. The directed purse seine fishery for BFT commences on July 15 of each year unless NMFS takes action to delay the season start date. Based on cumulative and projected landings in other commercial fishing categories, and the potential for gear conflicts on the fishing grounds or market impacts due to oversupply, NMFS may delay the BFT purse seine season start date from July 15 to no later than August 15 by filing an adjustment

with the Office of the **Federal Register** prior to July 1.

* * * * *

(5) *Harpoon category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels that possess Harpoon category Atlantic Tunas permits is 3.9 percent (45.4 mt) of the baseline annual U.S. BFT quota. The Harpoon category fishery closes on November 15 each year.

(6) *Trap category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels that possess Trap category Atlantic Tunas permits is 0.1 percent (1.2 mt) of the baseline annual U.S. BFT quota.

(7) * * *

(i) The total amount of BFT that is held in reserve for inseason or annual adjustments and fishery-independent research using quotas or subquotas is 2.5 percent (29.1 mt) of the baseline annual U.S. BFT quota. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of this reserve for inseason or annual adjustments to any category quota in the fishery.

(ii) The total amount of school BFT that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent (22 mt) of the total school BFT Angling category quota as described under paragraph (a)(2) of this section. This is in addition to the amounts specified in paragraph (a)(7)(i) of this section. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of the school BFT Angling category quota held in reserve for inseason or annual adjustments to the Angling category.

* * * * *

(10) * * *

(iii) Regardless of the estimated landings in any year, NMFS may adjust the annual school BFT quota to ensure that the average take of school BFT over each 4 consecutive-year period beginning in the 2007 fishing year does not exceed 10 percent by weight of the total annual U.S. BFT quota, inclusive of the allocation specified in paragraph (a)(3) of this section, for that period.

(iv) NMFS may subtract the best available estimate of dead discards from the amount of BFT that can be landed in the subsequent fishing year by those categories accounting for the dead discards.

* * * * *

[FR Doc. E7–11630 Filed 6–15–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XA82

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish, Pacific Ocean Perch, and Pelagic Shelf Rockfish for Catcher Vessels Participating in the Rockfish Limited Access Fishery in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish, Pacific ocean perch, and pelagic shelf rockfish for catcher vessels participating in the rockfish limited access fishery in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2007 total allowable catch (TAC) of northern rockfish, Pacific ocean perch, and pelagic shelf rockfish allocated to catcher vessels participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 1, 2007, through 2400 hrs, A.l.t., December 31, 2007.

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

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

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the TAC of northern rockfish, Pacific ocean perch, and pelagic shelf rockfish allocated to catcher vessels participating in the rockfish limited access fishery in the Central GOA will be necessary as incidental catch to support other anticipated groundfish fisheries for the 2007 fishing year. Consequently, the Regional Administrator is establishing a directed fishing allowance of 0 mt. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for northern rockfish, Pacific ocean perch, and pelagic shelf rockfish for catcher vessels participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of northern rockfish, Pacific ocean perch, and pelagic shelf rockfish for catcher vessels participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 8, 2007.

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

This action is required by § 679.20 and § 679.82 and is exempt from review under Executive Order 12866.

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

Dated: June 11, 2007.

James P. Burgess,

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

[FR Doc. E7–11634 Filed 6–15–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 116
Monday, June 18, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28374; Directorate Identifier 2007–NM–067–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600R Series Airplanes; and Model A310–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

> While they were gaining access to the THS (trimmable horizontal stabilizer) fuel tank for maintenance check, several operators have found one or several of the 8 THS hoist point fitting bases cracked or broken-off. The breakage resulted in metallic debris being released within the Trim Tank. The origin of the damage is most probably due to interference with the THS hoisting lugs that are stowed in the hoist point fittings in the reverse position, being screwed too deep inside the THS hoist fittings. Damaged hoist point fittings could cause the release of metallic debris within the THS fuel system.
> * * * Compliance with the requirements of this AD will also eliminate potential contributing factor[s] to ignition risks.

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 July 18, 2007.

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

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–28374; Directorate Identifier 2007–NM–067–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0024, dated January 25, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> While they were gaining access to the THS (trimmable horizontal stabilizer) fuel tank for maintenance check, several operators have found one or several of the 8 THS hoist point fitting bases cracked or broken-off. The breakage resulted in metallic debris being released within the Trim Tank. The origin of the damage is most probably due to interference with the THS hoisting lugs that are stowed in the hoist point fittings in the reverse position, being screwed too deep inside the THS hoist fittings. Damaged hoist point fittings could cause the release of metallic debris within the THS fuel system.
>
> This Airworthiness Directive (AD) requires the repair of any damaged THS hoist point fittings to prevent any risk of further hoist point fittings damage as well as any fuel leak. Compliance with the requirements of this AD will also eliminate potential contributing factor[s] to ignition risks.

The MCAI requires an inspection of the internal base of the THS hoist point fittings for signs of score, cracks, perforation or other damage; and an inspection of the hoist point fittings base inside the fuel tank for structural damage, as applicable, and applicable

corrective actions (repair damaged fittings and install new plastic plugs). Corrective actions must be done before return to revenue service. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletins A300–55–6041, and A310–55–2042, both dated September 13, 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 137 products of U.S. registry. We also estimate that it would take about 10 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $332 per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $155,084, or $1,132 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2007–28374; Directorate Identifier 2007–NM–067–AD.

Comments Due Date

(a) We must receive comments by July 18, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A310–300 and A300–600R series airplanes; certificated in any category; all serial numbers fitted with a THS (trimmable horizontal stabilizer) containing fuel on which, during production Airbus Modifications 04801 and 04802 have been embodied, and Airbus Modification 06549 has not been embodied; except aircraft on which Airbus Modification 13191 has been embodied in production, or Airbus Service Bulletin A310–55–2042 or A300–55–6041 has been incorporated in service.

Subject

(d) Stabilizers.

Reason

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

While they were gaining access to the THS (trimmable horizontal stabilizer) fuel tank for maintenance check, several operators have found one or several of the 8 THS hoist point fitting bases cracked or broken-off. The breakage resulted in metallic debris being released within the Trim Tank. The origin of the damage is most probably due to interference with the THS hoisting lugs that are stowed in the hoist point fittings in the reverse position being screwed too deep inside the THS hoist fittings. Damaged hoist point fittings could cause the release of metallic debris within the THS fuel system.

This Airworthiness Directive (AD) requires the repair of any damaged THS hoist point fittings to prevent any risk of further hoist point fittings damage as well as any fuel leak. Compliance with the requirements of this AD will also eliminate potential contributing factor[s] to ignition risks.

The MCAI requires an inspection of the internal base of the THS hoist point fittings for signs of score, cracks, perforation or other damage; and an inspection of the hoist point fittings base inside the fuel tank for structural damage, as applicable, and applicable corrective actions (repair damaged fittings and install new plastic plugs). Corrective actions must be done before return to revenue service.

Actions and Compliance

(f) Unless already done, within 60 months after the effective date of this AD, do the actions specified in paragraphs (f)(1) through (f)(6) of this AD in accordance with the instructions given in Airbus Service Bulletin A300–55–6041 or A310–55–2042, both dated September 13, 2006, as applicable.

(1) Remove the 8 THS metallic hoisting lugs.

(2) Do a detailed visual inspection of the internal base of the 8 THS hoist point fittings in order to detect visible signs of score, cracks, perforation or other damage.

(3) In case of no finding, install the new plastic plugs.

(4) In case of any finding, entry into the fuel trim tank is required to do a detailed visual inspection for structural damage of the hoist point fittings base inside the fuel tank.

(5) If structural damage is not confirmed, blend-out/protect the scoring area of the fitting internal base and install the new plastic plugs.

(6) If structural damage is confirmed, repair the damaged fittings and install the new plastic plugs.

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: Tom Stafford, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2007–0024, dated January 25, 2007; and Airbus Service Bulletins A300–55–6041 and A310–55–2042, both dated September 13, 2006; for related information.

Issued in Renton, Washington, on June 8, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–11677 Filed 6–15–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24270; Directorate Identifier 2005–NM–200–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Airplanes

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

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier proposed airworthiness directive (AD) for all Boeing Model 777–200, –300, and –300ER series airplanes. The original NPRM would have required, for the drive mechanism of the horizontal stabilizer, repetitive detailed inspections for discrepancies; repetitive lubrication of the ballnut and ballscrew; repetitive measurements of the freeplay between the ballnut and the ballscrew; and corrective action if necessary. The original NPRM resulted from a report of extensive corrosion of a ballscrew in the drive mechanism of the horizontal stabilizer on a Boeing Model 757 airplane, which is similar in design to the ballscrew on Model 777 airplanes. This action revises the original NPRM by adding airplanes to the applicability. We are proposing this supplemental NPRM to prevent an undetected failure of the primary load path for the ballscrew in the horizontal stabilizer and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

DATES: We must receive comments on this supplemental NPRM by July 13, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this supplemental NPRM.

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

FOR FURTHER INFORMATION CONTACT: Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6490; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–24270; Directorate Identifier 2005–NM–200–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

We will post all comments submitted, 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 supplemental NPRM. 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 in the Nassif Building at the DOT street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an AD (the ''original NPRM'') for all 777–200, –300, and –300ER series airplanes. The original NPRM was published in the **Federal Register** on March 30, 2006 (71 FR 16061). The original NPRM proposed to require, for the drive mechanism of the horizontal stabilizer, repetitive detailed inspections for discrepancies; repetitive lubrication of the ballnut and ballscrew; repetitive measurements of the freeplay between the ballnut and the ballscrew; and corrective action if necessary.

Actions Since Original NPRM Was Issued

Since we issued the original NPRM, we have determined that all Model 777 airplanes may be subject to the unsafe condition specified in the original NPRM. Therefore, we are issuing this supplemental NPRM to revise the applicability of the original NPRM to identify all Model 777 airplanes.

Comments

We have considered the following comments on the original NPRM.

Request To Remove Unnecessary Instruction

Two commenters, Boeing and Air Transport Association (ATA) on behalf of its member United Airlines (UAL), assert that the added instruction in paragraph (h) of the original NPRM regarding changing the position of the horizontal stabilizer to permit inspecting the entire ballscrew is not necessary as the Boeing 777 Aircraft Maintenance Manual and task cards already require such a change of position as part of the ballscrew inspection. A third commenter, British Airways (BA), also notes that the required instruction already exists as described. Boeing requests that we revise the description of the detailed inspection in the original NPRM as the specified instruction is unnecessary. UAL states that the phrase ''or in the referenced AMM sections'' is incorrect and requests that it be deleted from the first paragraph under the heading ''Differences Between the Proposed AD and Service Information'' in the original NPRM.

We agree. The instruction to move the horizontal stabilizer is sufficiently addressed as part of the required inspection in the Boeing 777 Aircraft Maintenance Manual and task cards and need not be repeated in the AD. Since the ''Differences Between the Proposed AD and Service Information'' section of the original NPRM is not carried forward, there is no need to change the paragraph specified by UAL. However, we have removed the unnecessary instruction ''changing the position of the horizontal stabilizer as needed to allow inspecting the entire ballscrew'' from paragraph (h) of the supplemental NPRM.

Request To Revise Maintenance Records Check

Boeing requests that we change the maintenance records check. Boeing states that, as written, the original NPRM would require production airplanes delivered after the effective date of the AD to have a maintenance records check within 6 months after the effective date. Further, Boeing states, airplanes delivered 6 months after the effective date would immediately be out of compliance. Boeing requests, therefore, that paragraph (g) of the original NPRM be revised to include the following statement: ''This paragraph applies only to those airplanes delivered prior to the effective date of this AD.''

We agree. We have determined that the maintenance records check should apply only to airplanes that received a standard airworthiness certificate or original export certificate of airworthiness prior to the effective date of the AD. We have revised paragraphs (g), (h), (i), and (j) of the supplemental NPRM to reflect this. We have also revised the Cost of Compliance of the supplemental NPRM to reflect the cost of the maintenance records check.

Request To Revise Prior Replacement of Actuator

ATA, on behalf of UAL, requests certain relief from the repetitive inspections of the horizontal stabilizer ballscrew. UAL states that paragraph (l) of the original NPRM does not state requirements for operators who have replaced actuators with new or overhauled actuators. UAL states it has ''hard-timed'' its actuators at 9 years to be removed and overhauled per original equipment manufacturer (OEM) component maintenance manual (CMM) specifications. UAL requests that credit for repetitive inspections be given to operators who have a stabilizer trim actuator overhaul maintenance program in place.

We agree. Any hard-time program that involves removing, overhauling, and re-installing the stabilizer trim actuator accomplishes the intent of performing one freeplay inspection, one detailed inspection, and one lubrication of the stabilizer ballscrew assembly, provided that the stabilizer ballscrew sub-assembly is removed from the trim actuator and overhauled. We find that removing, disassembling, and overhauling the stabilizer ballscrew sub-assembly in accordance with OEM CMM specifications provides a thorough detailed inspection and measurement of the condition of the stabilizer actuator and ballscrew. Therefore, we have revised paragraph (l) of the supplemental NPRM to give credit for accomplishing the actions required by paragraphs (h), (i), and (j) of this AD for actuators which have been overhauled as part of a hard-time program in accordance with OEM CMM specifications.

Request To Revise Description of Affected Airplanes

Boeing requests that certain language of the original NPRM be revised to clarify the extent to which Model 777 airplanes are affected. Boeing states that, at this time, Alert Service Bulletin 777–27A0059 applies to all Model 777 airplanes, current and future. Boeing requests that the original NPRM be changed as follows:

- That the Costs of Compliance be changed from ''there are about 582 airplanes'' to ''there are currently 582 airplanes'' and from ''would affect about'' to ''would currently affect about''; and
- That paragraph (c) Applicability be changed from ''Boeing Model 777–200, –300, and –300ER series airplanes'' to ''all Boeing Model 777 series airplanes.''

We partially agree. The costs of compliance estimate is understood to be based on the best information about affected airplanes currently in operation. There is no need to add ''currently'' to the costs of compliance. However, in reviewing this comment, we determined that there are about 596 airplanes in the worldwide fleet rather than 582 such airplanes, and about 203 airplanes of U.S. registry rather than 130 such airplanes. Further, we have determined that, as Alert Service Bulletin 777–27A0059 applies to future Model 777 airplanes, the applicability of the AD should be changed. Therefore, in this supplemental NPRM, we have revised the Costs of Compliance to reflect the increased number of airplanes and revised paragraph (c) to read ''all Boeing Model 777 airplanes.''

Suggestion To Change Governance of Maintenance Program

ATA, on behalf of its member American Airlines (AAL), suggests a change of governance for the maintenance program. AAL has no objections to the maintenance actions described in the original NPRM, but believes the maintenance program should be governed and dictated

through the maintenance review board report (MRBR) prepared by the FAA airplane evaluation groups (AEG), with proper oversight by the FAA Flight Standards Office, not via ADs. AAL asserts that implementation and oversight of ADs is costly to airlines, especially ADs which have no terminating action.

We do not agree. We have determined that the maintenance actions and intervals described in the original NPRM for the horizontal stabilizer ballscrew can directly affect the safety of the airplane and should be mandated because of the identified unsafe condition. To prevent escalation of the intervals of maintenance tasks that are directly linked both to airplane safety and to an accident, we found it necessary to mandate these actions by issuance of the proposed AD. We have not changed the supplemental NPRM in this regard.

Request To Change Intervals of Repetitive Actions

Two commenters, BA and Air France, do not agree with the repeat intervals specified in the original NPRM for the lubrication; and BA also does not agree with the repeat intervals specified in the original NPRM for the detailed inspection and freeplay measurement. BA states that the 777 Industry Steering Committee/Maintenance Review Board (ISC/MRB) meeting, held in February 2004, produced the ''Re-analysis of the Horizontal Stabilizer Control System MSG–3.'' BA asserts that this re-analysis took into account Boeing's safety analysis, and the suggested alternative repeat intervals were agreed to by numerous attendees at the meeting, including Boeing, Boeing's designated engineering representative (DER), the FAA Seattle Aircraft Evaluation Group (AEG), and Model 777 operators. In addition, BA asserts that the use of an improved synthetic oil-based grease (conforming to Boeing material specification BMS3–33) and 10 years of operating experience support the alternative repeat intervals. BA further asserts that Boeing's safety analysis of the Model 777 stabilizer drive mechanism revealed no problems with the configuration of that mechanism. BA therefore requests that the repeat intervals of the original NPRM be revised as follows:

- Detailed inspection—6,000 flight hours or 400 days, whichever comes first;
- Freeplay inspection—25,000 flight hours or five years, whichever comes first;
- Lubrication—2,000 flight hours or 400 days, whichever comes first.

Air France explains that its request is based on information from the MRB Report revision of March 3, 2006, and the maintenance planning document (MPD) revision of May 5, 2006. In addition, Air France states that a decision was made at the ISC meeting of January 2006 to revise the lubrication interval from 2,000 flight hours/400 days to 3,000 flight hours/400 days, based on in-service experience. Air France further states that it has never found any applicable corrosion or damage during 8 years of 777 operating experience. Air France states, therefore, that it does not agree with the lubrication interval specified in the original NPRM and requests that the interval be changed to 3,000 flight hours or 400 days, whichever comes first.

We do not agree with this request. Consistent with our response shown above to the comment regarding a change of governance for the maintenance program, we have identified an unsafe condition and are proposing an AD to control the tasks and intervals needed to address this condition. The commenters assert that alternative repeat intervals were agreed to by numerous attendees at the February 2004 ISC/MRB meeting, however, those intervals are inconsistent with the intervals developed by Boeing's safety organization and transmitted via letter to the Seattle Aircraft Certification Office (ACO) in support of development of this AD. The intervals for lubrication, detailed inspection, and freeplay inspection that appear in the FAA-approved Boeing service bulletin were determined from the results of a safety review by means of testing, failure mode analysis, and fault tree analysis and are based upon using BMS 3–33 grease or acceptable substitute. Boeing has not revised those intervals, and the intervals suggested by BA and Air France do not meet the requirements identified by the safety review. Further, Boeing has advised us that it intends to pursue revising the MPD task to reflect the compliance times specified in this AD at the next revision cycle of the document. Task intervals specified in maintenance programs may be increased based on positive results obtained from previous repetitions of the task. We are concerned with the practice of escalating safety related maintenance intervals until negative findings are discovered. We have not changed the supplemental NPRM as requested by the commenters. However, to obtain longer compliance times, anyone may request approval of an alternative method of compliance (AMOC) as specified in paragraph (n) of this supplemental NPRM, provided data are submitted to demonstrate that an acceptable level of safety will be maintained.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

Certain changes discussed above expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Costs of Compliance

There are about 596 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 203 airplanes of U.S. registry.

The proposed maintenance records check would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed inspection for U.S. operators is $16,240, or $80 per airplane, per inspection cycle.

The proposed detailed inspection would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed inspection for U.S. operators is $16,240, or $80 per airplane, per inspection cycle.

The proposed freeplay measurement would take about 5 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed freeplay measurement for U.S. operators is $81,200, or $400 per airplane, per measurement cycle.

The proposed lubrication would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed lubrication for U.S. operators is $16,240, or $80 per airplane, per lubrication 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 supplemental NPRM and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BOEING: Docket No. FAA–2006–24270; Directorate Identifier 2005–NM–200–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 13, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 777 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of extensive corrosion of a ballscrew in the drive mechanism of the horizontal stabilizer of a Boeing Model 757 airplane, which is similar in design to the ballscrew on Model 777 airplanes. We are issuing this AD to prevent an undetected failure of the primary load path for the ballscrew in the drive mechanism of the horizontal stabilizer and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

Compliance

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

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means Boeing Alert Service Bulletin 777–27A0059, Revision 1, dated August 18, 2005.

Note 1: The service bulletin refers to the Boeing 777 Aircraft Maintenance Manual (AMM), subjects 12–21–05, 27–41–13, and 29–11–00, as additional sources of service information for accomplishing the actions required by this AD.

Maintenance Records Check

(g) For airplanes that have received a certificate of airworthiness prior to the effective date of this AD: Within 180 days or 3,500 flight hours after the effective date of this AD, whichever occurs first, perform a maintenance records check or inspect to determine whether any horizontal stabilizer trim actuator has been replaced for any issue described in the service bulletin with a serviceable actuator that was not new or overhauled, and has not received a detailed inspection and freeplay measurement since the replacement.

Detailed Inspection

(h) Within the compliance times specified in paragraph (h)(1) or (h)(2) of this AD, as applicable: Perform a detailed inspection for discrepancies of the horizontal stabilizer trim actuator ballnut and ballscrew in accordance with Part 1 of the Accomplishment Instructions of the service bulletin. Repeat the detailed inspection thereafter at intervals not to exceed 3,500 flight hours or 12 months, whichever occurs first. If any discrepancy is found during any inspection required by this AD, before further flight, replace the actuator with a new or serviceable actuator in accordance with the service bulletin.

(1) For airplanes identified in paragraph (g) of this AD on which the actuator has not been replaced: Before the accumulation of 15,000 total flight hours, or within 18 months after the effective date of this AD, whichever occurs later.

(2) For airplanes identified in paragraph (g) of this AD on which the actuator has been replaced, and for airplanes having received a certificate of airworthiness after the effective date of this AD: Before the accumulation of 3,500 flight hours or within 24 months after the effective date of this AD, whichever occurs later.

Freeplay Measurement (Inspection)

(i) Within the compliance times specified in paragraph (i)(1) or (i)(2) of this AD, as applicable: Perform a freeplay measurement of the ballnut and ballscrew in accordance with Part 2 of the Accomplishment Instructions of the service bulletin. Repeat the freeplay measurement thereafter at intervals not to exceed 18,000 flight hours or 60 months, whichever occurs first. If the freeplay is found to exceed the limits specified in the service bulletin during any measurement required by this AD, before further flight, replace the actuator with a new or serviceable actuator in accordance with the service bulletin.

(1) For airplanes identified in paragraph (g) of this AD on which the actuator has not been replaced: Before the accumulation of 15,000 total flight hours, or within 18 months after the effective date of this AD, whichever occurs later.

(2) For airplanes identified in paragraph (g) of this AD on which the actuator has been replaced, and for airplanes having received a certificate of airworthiness after the effective date of this AD: Before the accumulation of 3,500 flight hours or within 24 months after the effective date of this AD, whichever occurs later.

Lubrication

(j) Within the compliance times specified in paragraph (j)(1) or (j)(2) of this AD, as applicable: Lubricate the ballnut and ballscrew in accordance with Part 3 of the Accomplishment Instructions of the service bulletin. Repeat the lubrication thereafter at intervals not to exceed 2,000 flight hours or 12 months, whichever occurs first.

(1) For airplanes identified in paragraph (g) of this AD on which the actuator has not been replaced: Before the accumulation of 15,000 total flight hours, or within 18 months after the effective date of this AD, whichever occurs later.

(2) For airplanes identified in paragraph (g) of this AD on which the actuator has been replaced, and for airplanes having received a certificate of airworthiness after the effective date of this AD: Before the accumulation of 3,500 flight hours or within 24 months after the effective date of this AD, whichever occurs later.

Credit for Using Original Issue of Service Bulletin

(k) Actions performed prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 777–27A0059, dated September 18, 2003, are considered acceptable for compliance with the corresponding actions of this AD.

Credit for Hard-time Replacement of Actuator

(l) Any actuator overhauled within the compliance times specified for paragraphs (h), (i), and (j) of this AD or before the effective date of this AD—as part of a ''hard-

time'' replacement program that includes removal of the stabilizer actuator from the airplane and overhaul of the stabilizer ballscrew in accordance with original equipment manufacturer (OEM) component maintenance manual (CMM) instructions—meets the intent of one detailed inspection, one freeplay inspection, and one lubrication of the stabilizer ballscrew. Therefore, any such actuator is considered acceptable for compliance with the initial accomplishment of paragraphs (h), (i), and (j) of this AD, and repetitions of those paragraphs may be determined from the performance date of that overhaul.

Parts Installation

(m) As of the effective date of this AD, no person may install, on any airplane, a horizontal stabilizer trim actuator that is not new or overhauled, unless a detailed inspection, freeplay measurement, and lubrication of that actuator have been performed in accordance with paragraphs (h), (i), and (j) of this AD.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Seattle Aircraft Certification Office, 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.

Issued in Renton, Washington, on June 8, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–11679 Filed 6–15–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25174; Directorate Identifier 2005–NM–007–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 45 Airplanes

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

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier proposed airworthiness directive (AD) for certain Learjet Model 45 airplanes. The original NPRM would have required revising the Airworthiness Limitations section of the airplane maintenance manual to incorporate certain inspections and compliance times to detect fatigue cracking of certain principal structural elements (PSEs). The original NPRM resulted from new and more restrictive life limits and inspection intervals for certain PSEs. This action revises the original NPRM by changing the applicability to add certain airplanes. We are proposing this supplemental NPRM to ensure that fatigue cracking of various PSEs is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

DATES: We must receive comments on this supplemental NPRM by July 13, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this supplemental NPRM.

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

Contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Steve Litke, Aerospace Engineer, Airframe and Services Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4127; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2006–25174; Directorate Identifier 2005–NM–007–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

We will post all comments submitted, 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 supplemental NPRM. 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 Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an AD (the ''original NPRM'') for certain Learjet Model 45 airplanes. The original NPRM was published in the **Federal Register** on June 26, 2006 (71 FR 36255). The original NPRM proposed to require revising the Airworthiness Limitations section of the airplane maintenance manual to incorporate certain inspections and compliance times to detect fatigue cracking of certain principal structural elements (PSEs).

Actions Since Original NPRM Was Issued

Since we issued the original NPRM, the manufacturer has informed us that the actions in the NPRM apply to serial numbers (S/Ns) 45–005 through 45–302 inclusive, and 45–2001 through 45–2049 inclusive. We issued the original NPRM to apply to S/Ns 45–002 through 45–233 inclusive, and S/Ns 45–2001 through 45–2031 inclusive. The supplemental NPRM includes this change in applicability.

Comments

We have considered the following comments on the original NPRM.

Requests to Withdraw the NPRM

Koch Business Holdings, LLC (Koch), asks if this proposed AD is necessary. Koch states that operators are already required to use the most up-to-date manuals, and wonders if it can expect to see an AD for every make and model of airplane for which a more restrictive change is made to the Airworthiness Limitations section of the airplane maintenance manual (AMM). Koch suggests that we streamline the paperwork instead of increasing the paperwork. Koch further states that the FAA cannot write an AD against a maintenance manual, and that this proposed AD merely adds a requirement to comply with a requirement (the maintenance manuals). Koch states that the proposed AD will not make certain that maintenance items are complied with. Koch suggests, instead of an AD, that we send out the information using advisory wires, service newsletters, and letters from the FAA to the operators. Koch states that it is 100 percent about safety, but believes that the proposed AD just distracts from safety.

McWane, Inc., also states that the proposed AD is unnecessary because the regulatory requirement for complying with the Chapter 4 AMM revisions already exists. McWane explains that the Chapter 4 items are Airworthiness Limitations that are directly tied to the original type certificate; non-compliance places the aircraft outside the requirements of the original type design. McWane feels that using an AD in this case is overkill and an inappropriate use of rulemaking. McWane is primarily concerned that this action would set a precedent that would allow an original equipment manufacturer to let the FAA ''become their scapegoat'' instead of working with operators to ensure compliance with revised data. McWane suggests getting the information out using other means, and issuing an AD only against non-compliant airplanes.

We infer that the commenters would like us to withdraw the original NPRM. We disagree. We have determined that an unsafe condition exists, and that the actions proposed in the original NPRM are necessary to ensure the continued operational safety of the affected fleet. Compliance with the terms of Airworthiness Limitations sections is required by Federal Aviation Regulations Sections 43.16 (for persons maintaining products) and 91.403 (for operators). Based on in-service data or post certification testing and evaluation, the manufacturer may revise the Airworthiness Limitations section to include new or more restrictive life limits and inspections. Or it may become necessary for the FAA to impose new or more restrictive life limits and structural inspections in order to ensure continued structural integrity and continued compliance with damage tolerance requirements. However, in order to require compliance with these new inspection requirements and life limits, the FAA must engage in rulemaking. Therefore, if we do not issue an AD, the revised limitations in the AMMs cannot be made mandatory. Because loss of structural integrity would constitute an unsafe condition, it is appropriate to impose these requirements through the AD process. We have not changed the supplemental NPRM in this regard.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Addition of Note To Clarify Requirements of Paragraph (f) of the Supplemental NPRM

We have added Note 2 to the supplemental NPRM to clarify that after an operator complies with the requirements of paragraph (f) of the proposed AD, that paragraph does not require that operators subsequently record accomplishment of those requirements each time an action is accomplished according to that operator's FAA-approved maintenance inspection program.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

The changes discussed in the section titled ''Actions since Original NPRM was Issued'' expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Costs of Compliance

There are about 347 airplanes of the affected design in the worldwide fleet. This supplemental NPRM would affect about 258 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of this supplemental NPRM for U.S. operators is $20,640, or $80 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 supplemental NPRM 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):

LEARJET: Docket No. FAA–2006–25174; Directorate Identifier 2005–NM–007–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 13, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Learjet Model 45 airplanes, certificated in any category; serial numbers (S/Ns) 45–002 through 45–302 inclusive, and S/Ns 45–2001 through 45–2049 inclusive.

Unsafe Condition

(d) This AD results from new and more restrictive life limits and inspection intervals for certain principal structural elements (PSEs). We are issuing this AD to ensure that fatigue cracking of various PSEs is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

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.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (g) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529–1.

Revise the Airworthiness Limitations Section (ALS)

(f) Within 30 days after the effective date of this AD, revise the ALS of the airplane maintenance manual (AMM) to include new life limits and inspection intervals according to a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. Incorporating the applicable chapters in paragraph (f)(1) or (f)(2) of this AD in the AMM is one approved method for doing the revision. Thereafter, except as provided in paragraph (g) of this AD, no alternative life limits or inspection intervals may be approved for the affected PSEs.

(1) For Learjet Model 45 airplanes, S/Ns 45–002 through 45–302 inclusive: Chapter 4 of the Learjet 45 Maintenance Manual, Revision 38, dated April 24, 2006.

(2) For Learjet Model 45 airplanes, S/Ns 45–2001 through 45–2049 inclusive: Chapter 4 of the Learjet 40 Maintenance Manual, Revision 6, dated April 24, 2006.

Note 2: After an operator complies with the requirements of paragraph (f) of this AD, that paragraph does not require that operators subsequently record accomplishment of those requirements each time an action is accomplished according to that operator's FAA-approved maintenance inspection program.

AMOCs

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

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

Issued in Renton, Washington, on June 8, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–11682 Filed 6–15–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 251

RIN 1010–AD41

Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf—Changing Proprietary Term of Certain Geophysical Information

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: The MMS proposes to extend the proprietary term of certain reprocessed geophysical information submitted to MMS under a permit. The proposed rule would give up to 5 years of additional protection to reprocessed vintage geophysical information that MMS retained and, under the current rule, is subject to release by MMS 25 years after issuing the germane permit. The extension would provide incentives to permittees and third parties to reprocess, market, or in other ways use geophysical information that may not otherwise be reprocessed without the term extension.

DATES: Submit comments by August 17, 2007. The MMS may not fully consider comments received after this date. Submit comments to the Office of Management and Budget (OMB) on the information collection burden in this proposed rule by July 18, 2007.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD41 as an identifier in your message. See also Public Availability of Comments under Procedural Matters.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the website for submitting comments.
- *E-mail MMS at rules.comments@mms.gov.* Use RIN 1010–AD41 in the subject line.
- *Fax:* 703–787–1546. Identify with the RIN, 1010–AD41.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Regulations and Standards Branch (RSB); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Changing Proprietary Term of Certain Geophysical Information, 1010–AD41'' in your comments and include your name and return address.
- *Send comments on the information collection in this rule to:* Interior Desk Officer 1010–0048, Office of Management and Budget; 202–395–6566 (fax); e-mail: *oira_docket@omb.eop.gov.* Please also send a copy to MMS.

FOR FURTHER INFORMATION CONTACT: David Zinzer, Geophysicist, Offshore Minerals Management, Resource Evaluation Division, at (703) 787–1628 or e-mail *david.zinzer@mms.gov.*

SUPPLEMENTARY INFORMATION:

Summary of Proposed Rulemaking

The MMS proposes to extend, upon successful application to MMS, the proprietary term of geophysical information that a permittee or third party reprocessed 20 or more years after MMS issued the germane permit under which the originating data were collected. The proposed rule gives up to 5 years of additional protection to reprocessed vintage geophysical information that MMS retained and, under the current rule, is subject to release by MMS 25 years after issuing the permit. The extension would provide incentives to permittees and third parties to reprocess, market, or in

other ways use geophysical information that may not otherwise be reprocessed without the term extension.

Industry Concerns With Previous Final Rulemaking

Final rulemaking at part 251 (71 FR 16033, March 30, 2006, effective date May 1, 2006) modified the start dates of proprietary terms for geophysical data and information and any derivatives of these data and information that MMS acquires for retention from permittees and third parties. The start dates changed from the date of submittal to the date of the permit under which the originating data were collected, retroactive to 1976.

The International Association of Geophysical Contractors (IAGC), in an April 21, 2006, letter to Director R.M. ''Johnnie'' Burton, mostly objected to changes that affect the proprietary term for reprocessed geophysical information. Before the May 1, 2006, rule changes, the derivative reprocessed information enjoyed its own new 25-year term, starting on the date of its submittal to MMS. After the May 1 changes, reprocessed information enjoyed the same 25-year term as the original information, starting on the date the germane permit was issued.

An example of IAGC's concerns is if before the May 1, 2006, changes, geophysical information derived from data collected under a 1985 permit were reprocessed and submitted to MMS for retention in January 2006, its proprietary term would expire in 2031 (2006 + 25). After the May 1, 2006, rule changes, the proprietary term of the reprocessed information submitted in January 2006, would expire in 2010 (1985 + 25). If the same information were to be submitted in 2011 or later, it would be subject to immediate public release, since the applicable 25-year term would have already expired.

The IAGC letter also stated that one permittee that is actively reprocessing vintage geophysical information derived from data collected in the Alaska Outer Continental Shelf (OCS) concluded that the May 1 changes to the rule will cost the permittee significant future revenue, as repeated global experience demonstrates that some clients will just wait for the new geophysical information to be handed to them for free in a short time (after release by MMS). Third parties who reprocess geophysical information acquired from permittees would also lose reprocessing investment opportunities for their geophysical information.

MMS Response to Industry Concerns

The MMS recognizes that industry invests significant capital in reprocessing geophysical information; however, the IAGC letter did not document or quantify costs to industry directly related to the May 1 changes to part 251. Furthermore, MMS rarely selects and retains minimally processed geophysical information, the type of reprocessed geophysical information that is of most interest and value to industry.

Permittees commonly offer licenses for geophysical information with application of only routine editing of field tapes and common processing and reprocessing techniques. Geophysical information at this early stage of the processing sequence is the most suitable and flexible for subsequent reprocessing. Many third parties prefer to apply their own advanced processing techniques to geophysical information licensed from permittees. Permittees will also further reprocess the information, applying advanced algorithms and other techniques, for license or sale.

However, as a matter of practice, MMS does not acquire minimally reprocessed geophysical information, as MMS does not have the capability to further process the information using advanced techniques. Moreover, MMS does not release geophysical information it does not acquire for retention, including valuable minimally processed geophysical information.

Most geophysical information submitted to and retained by MMS was reprocessed to or near the final stages of the processing sequence. This geophysical information is useful for viewing and merging with other types of information. However, it is basically not suitable for further processing and consequently of little interest or value to industry for that purpose when it is released to the public following expiration of its proprietary term.

Furthermore, most reprocessing by permittees or third parties occurs in the first few years of the 25-year proprietary term, not near the end of the term, when there is less time to sell, license, or otherwise make use of the reprocessed information.

Also cited in the IAGC letter is lost opportunity for MMS and the public interest to have vintage information made available in a format that can be meaningful using modern processing technologies. Industry submitted similar comments on changes put forth in the related notice of proposed rulemaking, published July 17, 2002 (67 FR 46942), which preceded the March 31, 2006, final rulemaking.

In some cases the confidentiality period is in effect shortened by more than 10 years. In such cases, more than 40 percent of the time over which one would expect to recover the initial investment and earn a return will be lost. For example, if geophysical information from a 1985 permit were submitted to MMS in 2002, the information would be released in 2027 (2002 + 25), a total term of protection of 42 years (1985–2027) under the previous rule. It would be released in 2010 under the current rule, a loss of 17 years (2027–2010), or 40 percent (17/42) of the 42-year term under the previous rule. Resetting the start date of the 25-year proprietary term to the date the permit is issued reduces the economic life of new geophysical information, and in effect reduces the return on investment in future non-exclusive seismic programs, stifling healthy competition and investment in new technologies and innovation. Value-added derivative products created when legacy (vintage) geophysical information is reprocessed, applying new technology and computer power, are becoming increasingly vital to the exploration and production process in the Gulf of Mexico.

The MMS notes that before the May 1, 2006, changes, reprocessed geophysical information could have in effect up to a 50-year proprietary term if it were submitted at the end of the initial 25-year term (25-year original term + 25-year new term). This would be virtually the same as the 50-year term for geophysical data and in sharp contrast to the proprietary terms for geophysical data and information submitted under a MMS lease (10 years or when the lease expires, whichever is sooner), or for geophysical information collected on the continental shelves of the United Kingdom, Australia, or Norway (2 to 10 years). The 25-year term, starting on the date of the permit, in the 2006 final rule was considered by MMS a reasonable amount of time for a permittee or third party to receive a fair return on investment in acquiring, processing, or reprocessing geophysical information.

Proposed Rulemaking Details

To address industry concerns regarding release of geophysical information reprocessed near the end of its 25-year term, MMS proposes in this rule to extend, upon successful application to MMS, the proprietary term for geophysical information for which reprocessing was completed in the last 5 years of its initial 25-year

proprietary term, or thereafter. The term of geophysical information that was processed or reprocessed up to the 20th anniversary of the date of the germane permit is not affected by this proposed rulemaking.

Permittees and third parties may apply to MMS for an extension of the proprietary term, starting on the date of completion of reprocessing the geophysical information. The application must include:

- Name and address of the permittee or third party;
- Product name;
- Identification of the geophysical information-area;
- Identification of originating permit number and date;
- Description of reprocessing performed;
- Identification of the date of completion of reprocessing the geophysical information;
- Certification that the product meets the definition of processed geophysical information and that all other information in the application is accurate; and
- Signature and date.

If MMS disapproves the application for an extension, the Regional Director will state the reasons for the denial and will advise the applicant of changes needed to obtain approval. There will be a 1-year grace period, starting on the date that the final rule becomes effective, to allow permittees and third parties sufficient time to meet the above requirements and file separate applications for each extension. During this time, MMS will not release geophysical information which was reprocessed 20 or more years after MMS issued the germane permit.

After the 1-year grace period, MMS will resume releasing eligible reprocessed information. Also, in order to obtain an extension, permittees and third parties must apply for the extension within 30 days after the date of completion of the reprocessing. If an application is not filed, not filed on time, or if the application is not approved by MMS, the original 25-year proprietary term applies to the release date of the reprocessed geophysical information.

Procedural Matters

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This proposed rule is not a significant rule as determined by the OMB and is not subject to review under E.O. 12866.

(1) The proposed rule would not have an annual effect of $100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

The MMS estimates that over the first 5 years after the rule becomes effective, revenue generated by licensing or selling geophysical information reprocessed 20 or more years after MMS issued the germane permit and for which MMS extended the proprietary term, would be in a range from $3 million to $25 million over the period. More revenue would be generated in the first year during which there is a 1-year grace period to apply for extensions of proprietary terms of all eligible reprocessed information. In subsequent years, applications must be filed within 30 days of completion of processing.

The range of estimated values depends on the number of lease sales in areas where eligible vintage geophysical information exists, mostly in the Alaska OCS, the amount and quality of reprocessed geophysical information, and economic factors. MMS assumes 15 extensions would be approved over the 5-year period after the final rule is effective.

(2) The proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) The proposed rule would not alter the budgetary effects of entitlements, grants, user fees or loan programs, or the rights or obligations of their recipients.

(4) The proposed rule would not raise novel legal or policy issues.

Regulatory Flexibility Act (RFA)

The Department certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*).

This proposed rule would extend the proprietary term for vintage reprocessed geophysical information. The only entities affected by this proposed rule change are about 10 geophysical companies, if still in existence, whose reprocessed geophysical information being held by MMS may be released later than under current regulations. The Small Business Administration classifies geophysical surveying and mapping service companies under the North American Industry Classification System Code 541360. The criteria for determining a small entity for this classification code is annual receipts of less than $4.5 million. All of the 10 geophysical companies potentially affected by this proposed rule have annual receipts greater than $4.5 million; therefore, this proposed rule will not have a significant economic effect on a substantial number of small entities.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the DOI.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Leasing on the U.S. Outer Continental Shelf (OCS) is limited to residents of the U.S. or companies incorporated in the U.S. The proposed rule would not change that requirement.

Unfunded Mandates Reform Act (UMRA)

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The proposed rule would not have a significant or unique effect on State, local or tribal governments or the private sector. A statement containing

the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required. This is because the proposal would not affect State, local, or tribal governments, and the effect on the private sector is small.

Takings Implication Assessment (Executive Order 12630)

This proposed rule is not a governmental action capable of interference with constitutionally protected property rights. Thus, MMS did not need to prepare a Takings Implication Assessment according to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Federalism (Executive Order 13132)

With respect to E.O. 13132, this proposed rule would not have federalism implications. This proposed rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role.

Civil Justice Reform (Executive Order 12988)

With respect to E.O. 12988, The Office of the Solicitor has determined that the proposed rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act (PRA)

This proposed rule contains a collection of information that is being submitted to OMB for review and approval under § 3507(d) of the PRA. As part of our continuing effort to reduce paperwork and respondent burdens, MMS invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burden. If you wish to comment on the information collection aspects of revised 30 CFR 251, you may send your comments directly to OMB (see the **ADDRESSES** section of this notice). Please identify your comments with 1010–0048. Send a copy of your comments to the Regulations and Standards Branch, Attn: Comments; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. You may obtain a copy of our submission to OMB to revise and extend the OMB approval for 1010–0048 by contacting the Bureau's Information Collection Clearance Officer at (202) 208–7744.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB received it by July 18, 2007. This does not affect the deadline for the public to comment to MMS on the proposed regulations.

The title of the collection of information for the rule is ''30 CFR 251, Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf.''

Respondents for this rulemaking include approximately 10 Federal OCS permittees. Responses to this collection are mandatory and required for a benefit. The frequency of reporting is on occasion. The proposed new requirement allows permittees and third parties to apply for an extension of the 25-year proprietary term within 30 days after the date of completion of the reprocessing. MMS will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1733), and under regulations at 30 CFR parts 250, 251, and 252. The information collection (IC) does not include questions of a sensitive nature.

The collection of information required by the current subpart 30 CFR 251 regulations is approved under OMB Control Number 1010–0048 (expiration 7/31/09). The proposed rule imposes a new requirement to the information collection for 3 burden hours. Once the rulemaking becomes effective, the new burden hours will be incorporated into the existing information collection. Refer to the chart for the current and proposed burden.

Current 30 CFR 251 proposed	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
		Fee		
	Form			
251.4(a), (b); 251.5(a), (b), (d); 251.6; 251.7.	Apply for permits (form MMS–327) to conduct G&G exploration, including deep stratigraphic tests/revisions when necessary.	6	110 Applications	660
		110 applications × $1,900 fee = $209,000		
	Subtotal		110 responses	660
		$209,000		
	General			
251.4(b); 251.5(c), (d); 251.6	File notices to conduct scientific research activities, including notice to MMS prior to beginning and after concluding activities.	6	4 Notices	24
251.6(b) 251.7(b)(5)	Notify MMS if specific actions should occur; report archaeological resources. (No instances reported since 1982.).	1	1 Notice	1
251.7(c)	Enter into agreement for group participation in test drilling, including publishing summary statement; provide MMS copy of notice/list of participants. (No agreements submitted since 1989.).	1	1 Agreement	1
251.9(c)	Notify MMS to relinquish a permit	½	8 Notices	4

Current 30 CFR 251 proposed	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
251.10(c)	File appeals	Not subject to the PRA.		0
251.1–251.14	General departure and alternative compliance requests not specifically covered elsewhere in part 251 regulations.	2	1 Request	2
Permit Form (Form MMS–327).	Retain G&G data/information for 10 years and make available to MMS upon request.	1	100 Recordkeepers	100
	Subtotal	115 responses		132
Submissions				
251.7	Submit information on test drilling activities under a permit, including Form MMS–123.	Burden included under 1010–0141.		0
251.7(d)	Submit bond(s) on deep stratigraphic test	Burden included under 30 CFR part 256 (1010–0006).		0
251.8(b), (c)	Submit modifications to, and status/final reports on, activities conducted under a permit.	2	55 Respondents × 4 Reports = 220.	440
251.11; 251.12	Notify MMS and submit G&G data information collected under a permit and/or processed by permittees or 3rd parties, including reports, logs or charts, results analyses, descriptions, etc.	4	50 Submissions	200
251.14(a)	Submit comments on MMS intent to disclose data/info. to the public.	1	1 Comment	1
251.14(c)(2)	Submit comments on MMS intent to disclose data/info. to an independent contractor/agent.	1	1 Comment	1
251.14(c)(4)	Contractor/agent submits written commitment not to sell, trade, license, or disclose data/info. without MMS consent.	1	1 Commitment	1
	Subtotal	273 responses		643
Requests				
251.8(a)	Request reimbursement for certain costs associated with MMS inspections. (No requests in many years. OCS Lands Act requires Government reimbursement.).	1	1 Request	1
251.13	Request reimbursement for certain costs associated with reproducing data/information.	2	50 Submissions	100
Permit Form (MMS-327); 251.14(b)(3).	Request extension of time period for permitted activities.	1	50 Extensions	50
	Subtotal	101 responses		151
Extension				
251.14(b)(1), (2), (5)	Permittees and 3rd parties apply for extension for geophysical information within 30 days after reprocessing completion date.	1	3 Extensions	3
	Subtotal	3 responses		3
Total Hour and Fee Burden.			599	1,586
			602	1,589
			$209,000 Fee	

The MMS specifically solicits comments on the following questions:

(1) Is the collection of information necessary for MMS to properly perform its functions, and will it be useful?

(2) Are the estimates of the burden hours of the collection reasonable?

(3) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(4) Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping ''non-hour cost'' burden resulting from the collection of information. Other than the cost recovery fee listed in current regulations at § 251.5, we have not identified any other costs, and we solicit your comments. For reporting and recordkeeping only, your response should split the cost estimate into two components: (1) Total capital and

startup cost component, and (2) annual operation, maintenance, and purchase of services components. Your estimates should consider the costs to generate, maintain, disclose or provide the information. You should describe the methods you use to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and start-up costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, our estimates should not include equipment or services purchased: Before October 1, 1995; to comply with requirements not associated with the information collection; for reasons other than to provide information or keep records for the Government; or as part of customary and usual business or private practices.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. MMS has analyzed this proposed rule under the criteria of the NEPA and 516 Departmental Manual 6, Appendix 10.4C(1). MMS completed a Categorical Exclusion Review for this action and concluded that ''the rulemaking does not represent an exception to the established criteria for categorical exclusion; therefore, preparation of an environmental analysis or environmental impact statement will not be required.''

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires the agency to prepare a Statement of Energy Effects when it takes a regulatory action that is identified as a significant energy action. This proposed rule is not a significant energy action, and therefore would not require a Statement of Energy Effects because it:

a. Is not a significant regulatory action under E.O. 12866,

b. Is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and

c. Has not been designated by the Administrator of the Office of Information and Regulatory Affairs, OMB, as a significant energy action.

Consultation With Indian Tribes (Executive Order 13175)

Under the criteria in E.O. 13175, we have evaluated this proposed rule and determined that it has no potential effects on federally recognized Indian tribes. There are no Indian or tribal lands in the OCS.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. MMS invites your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the rule? What else can MMS do to make the rule easier to understand?

Send a copy of any comments that concern how MMS could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

List of Subjects in 30 CFR Part 251

Continental shelf, Freedom of information, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Research.

Dated: June 1, 2007.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, MMS proposes to amend 30 CFR part 251 as follows:

PART 251—GEOLOGICAL AND GEOPHYSICAL (G&G) EXPLORATIONS OF THE OUTER CONTINENTAL SHELF

1. The authority citation for part 251 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*, 31 U.S.C. 9701.

2. Amend § 251.14 as set forth below:

A. Revise the introductory text in paragraph (b);

B. Revise the table in paragraph (b)(1);

C. Redesignate paragraphs (b)(2) and (b)(3) as (b)(6) and (b)(7), respectively; and

D. Add new paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) to read as follows:

§ 251.14 Protecting and disclosing data and information submitted to MMS under a permit.

* * * * *

(b) *Timetable for release of G&G data and information related to oil, gas, and sulphur that MMS acquires.* Except for high-resolution data and information released under 30 CFR 250.197(b)(2), MMS will release or disclose acquired data and information in accordance with paragraphs (b)(1) through (b)(7) of this section.

(1) * * *

If you or a third party submit and MMS retains . . .	The Regional Director will release them to the public . . .
(i) Geological data and information	10 years after MMS issued the permit.
(ii) Geophysical data	50 years after MMS issued the permit.
(iii) Geophysical information reprocessed less than 20 years after MMS issued the germane permit.	25 years after MMS issued the permit.
(iv) Geophysical information reprocessed 20 or more years after MMS issued the germane permit.	25 years after MMS issued the permit; or, if you or a third party applied for an extension of the proprietary term, 5 years after MMS approved the application.

(2) Permittees and third parties may apply to MMS for an extension of the 25-year proprietary term for geophysical information reprocessed 20 or more years after MMS issued the germane permit. You must submit the application to MMS within 30 days after completion of the reprocessing, except during the initial 1-year grace period as provided in paragraph (b)(3) of this section. Filing locations are listed in § 251.5(d). Your application must include:

(i) Name and address of the permittee or third party;

(ii) Product name;

(iii) Identification of the geophysical information-area;

(iv) Identification of originating permit number and date;

(v) Description of reprocessing performed;

(vi) Identification of the date of completion of reprocessing the geophysical information;

(vii) Certification that the product meets the definition of processed geophysical information and that all other information in the application is accurate; and

(viii) Signature and date.

(3) There will be a 1-year grace period, starting [EFFECTIVE DATE OF THE FINAL RULE], to allow permittees and third parties sufficient time to meet the above requirements and to apply for all eligible extensions. During this time, MMS will not release geophysical information which was reprocessed 20 or more years after the date that MMS issued the germane permit.

(4) After [DATE 1 YEAR AFTER EFFECTIVE DATE OF THE FINAL RULE], MMS will resume releasing eligible reprocessed information. If an application for extension is not filed, not filed on time, or not approved by MMS, the original 25-year proprietary term applies to the release date of the reprocessed geophysical information.

(5) You may apply for multiple extensions related to the same permit; however, the maximum proprietary term for geophysical information is 50 years after MMS issued the permit.

* * * * *

[FR Doc. 07–2960 Filed 6–15–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–07–107]

RIN 1625–AA09

Drawbridge Operation Regulations; Gulf Intracoastal Waterway Mile 131.8, Belleair Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the drawbridge regulation of the Belleair Beach Bridge, Gulf Intracoastal Waterway mile 131.8, Belleair Beach, Pinellas County, Florida. This proposed rule will require this drawbridge to open on signal, except that from 7 a.m. to 7 p.m. this bridge will open on the hour and half-hour. This action is necessary for workers safety and will assist in expediting the construction of the new bridge.

DATES: Comments and related material must reach the Coast Guard on or before August 2, 2007.

ADDRESSES: You may mail comments and related material to Commander (dpb), Seventh Coast Guard District, 909 SE 1st Avenue, Room 432, Miami, Florida 33131–3050. Commander (dpb) 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), Seventh Coast Guard District, 909 SE 1st Avenue, Room 432, Miami, Florida 33131–3050 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Seventh Coast Guard District, Bridge Branch, telephone number 305–415–6744.

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 [CGD07–07–107], 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 81/2 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Bridge Branch, Seventh 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 existing regulation of the draw bridge requires that the Belleair Causeway bridge, mile 131.8 at Clearwater, shall open on signal; except that, from 12 noon to 6 p.m., on Saturdays, Sundays, and holidays, the draw need open only on the hour, quarter hour, half hour, and three-quarter hour.

Due to the construction of a new high level fixed Bridge, at Belleair Beach, Intracoastal Waterway mile 131.8, ECDriver, representing the owner of the bridge, has requested that the Coast Guard change the current operation of the Belleair Beach Drawbridge. The drawbridge will be required to open twice an hour from 7 a.m. to 7 p.m. In addition, the waterway may be restricted or closed for short periods to allow for construction of the new bridge. Exact times and dates of any waterway restrictions and closures and drawbridge restrictions will be published in the Local Notice to Mariners and Broadcast Notice to Mariners. In cases of emergency, the drawbridge will be opened as soon as possible. This regulation is necessary for workers safety and will assist in expediting construction of the new bridge.

Discussion of Proposed Rule

The draw of the Belleair Beach Drawbridge shall open on signal, except that from 7 a.m. to 7 p.m. the bridge shall open on the hour and half-hour. Waterway closures shall be authorized by the Captain of the Port, St Petersburg, as needed and will be published in the Local Notice to Mariners and Broadcast Notice to Mariners. The draw shall open as soon as possible for the passage of tugs with tows, public vessels of the United States and vessels in a situation where a delay would endanger life or property.

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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary, because the rule will allow for scheduled bridge openings of this drawbridge and all waterway restrictions or closure times will be published with adequate time for mariners to plan accordingly.

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, as the rule will allow for scheduled bridge openings of this drawbridge and all waterway restrictions or closure times will be published with adequate time for mariners to plan accordingly.

This proposed rule would affect the following entities, some of which may be small entities: The owners or operators of vessels needing to transit the Intracoastal Waterway in the vicinity of the Belleair Beach Bridge, persons intending to drive over the bridge, and nearby business owners. The revision to the opening schedule will not have a significant impact on a substantial number of small entities. Vehicle traffic and small business owners in the area may benefit from the improved traffic flow that regularly scheduled openings will offer this area. Although bridge openings will be less frequent, vessel traffic will still be able to transit the Intracoastal Waterway.

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 the Seventh Coast Guard District Bridge Branch at the address under **ADDRESSES**. 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.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that 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, (32)(e), of the Instruction, from further environmental documentation. Under

figure 2–1, paragraph (32)(e), an ''Environmental Analysis Check List'' or ''Categorical Exclusion Determination'' is not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

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; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.287(i) to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(i) The draw of the Belleair Beach Drawbridge, mile 131.8, Belleair Beach, FL shall open on signal, except that from 7 a.m. to 7 p.m., the bridge shall open on the hour and half-hour.

Dated: May 30, 2007.

D.W. Kunkel,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. E7–11661 Filed 6–15–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0619; FRL–8327–2]

Revisions to the Nevada State Implementation Plan, Washoe County District Health Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Washoe County District Health Department (WCDHD) portion of the Nevada State Implementation Plan (SIP). These revisions concern opacity, emissions of carbon monoxide (CO) and particulate matter (PM) from wood stoves and fireplaces, and air emergency episode plans. We are proposing approval of local rules that help regulate emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by July 18, 2007.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0619, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
- *E-mail: steckel.andrew@epa.gov.*
- *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: WCDHD Rules 010.117, 040.005, 040.051, and 050.001. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

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

Dated: May 9, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E7–11581 Filed 6–15–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 484

[CMS–1541–CN]

RIN 0938–AO32

Medicare Program; Home Health Prospective Payment System Refinement and Rate Update for Calendar Year 2008; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule; correction notice.

SUMMARY: This document corrects technical errors that appeared in the proposed rule published in the **Federal Register** on May 4, 2007, entitled ''Medicare Program; Home Health Prospective Payment System Refinement and Rate Update for Calendar Year 2008'' (72 FR 25356).

FOR FURTHER INFORMATION CONTACT: Randy Throndset, (410) 786–0131.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 07–2167 of May 4, 2007 (72 FR 25356), there were a number of technical errors that we identified and corrected in the Correction of Errors section below.

II. Summary of Errors

In the May 4, 2007 published proposed rule, on page 25388, we

provided a Table 4 ''Regression Coefficients for Calculating Case-Mix Relative Weights'' that illustrated payment regression coefficients, which represent the average addition to resource cost due to each severity level. We inadvertently miscalculated the payment for the case-mix groups in the second column of Table 4 and have corrected these errors.

We are republishing Table 4 in its entirety with the corrected information. The text on page 25388 describing Table 4 has also been changed to reflect the corrected data in the table as well as a typographical error. We are also correcting the language on page 25388 which describes how coefficients are scaled. A phrase was inadvertently omitted which notes that the calculation also adjusts for budget neutrality in the weights.

We are correcting text on page 25389, which incorrectly stated that we are proposing to adjust for nominal change in case-mix through a reduction in the weights. The adjustment for nominal change in case-mix is made through a rate reduction in the national standardized 60-day episode payment. We are also correcting some typographic errors. On pages 25389–25392, Table 5 ''Case-Mix Groups, Average Cost, and Case-Mix Weight'' includes the predicted average resource cost for the 153 case-mix groups of the proposed model. We inadvertently miscalculated the ''Average Cost'' in the fourth column. We are republishing Table 5 in its entirety with the corrected information.

On pages 25430–25431, Table 12a ''NRS Case-Mix Adjustment Variables and Scores'' sets forth the NRS scores for the five-group model. We inadvertently included incorrect scores in the third column and have corrected these errors. The table also corrects how the scoring is broken out for Outcome and Assessment Information Set (OASIS) item M0450, giving separate scores for stage 3 and stage 4 pressure ulcers, separating 1 pressure ulcer and 2 pressure ulcers within both stages 3 and 4, changing 3 pressure ulcers for stage 3 or 4 to 3+ pressure ulcers for stage 3, changing the 4+ pressure ulcers for stage 3 and 4 to 3+ pressure ulcers for stage 4, and deleting the score for 5 or more pressure ulcers. We are republishing Table 12a in its entirety with the corrected information.

We are also correcting text on page 25444 describing the calculation of the case-mix and wage-adjusted national standardized 60-day episode payment rate including non-routine supplies to correct an error in the order of the calculation. We are correcting typographical errors in the LUPA calculation example on page 25447.

Finally, we are correcting typographical errors in Addendum A on page 25459, in the rural Massachusetts and New Jersey wage indices. The text of the first footnote to Addendum A also incorrectly states that all counties within the State are classified as rural. The first footnote has been corrected.

III. Correction of Errors

In FR Doc. 07–2167 of May 4, 2007 (72 FR 25356), make the following corrections:

1. On page 25388, in the first column, the first full paragraph,

a. In line 1, the word ''PSS'' is corrected to read ''PPS''.

b. In lines 5 through 10, the sentence ''(To show the coefficients in actual, as opposed to resource cost, dollars, the coefficients were scaled by a multiplier representing the ratio of the HH PPS average payment level to the Abt Associates average resource cost level)'' is corrected to read as follows: ''(To show the coefficients in actual, as opposed to resource cost, dollars, the coefficients were scaled by a multiplier representing the ratio of the HH PPS average payment level to the Abt Associates average resource cost level after adjusting for budget neutrality in the weights (see section II.A.2.c. for an explanation of budget neutrality adjustment to the weights.))''.

c. In line 17, the figure ''$861.74'' is corrected to read ''$869.55''.

d. In line 18, the figure ''$219.44'' is corrected to read ''$221.43''.

2. On page 25388, in the first column, second full paragraph, line 4, the figure ''$1,265.18'' is corrected to read ''$1,276.66''.

3. On page 25388, in the second column, first partial paragraph,

a. In line 5, the figure ''$1,265.18'' is corrected to read ''$1,276.66''.

b. In line 6, the figure ''$139.26'' is corrected to read ''$140.52''.

c. In line 7, the figure ''$645.90'' is corrected to read ''$651.76''.

d. In line 9, the figure ''$210.94'' is corrected to read ''$212.85''.

e. In line 15, the figure ''$2,261.28'' is corrected to read ''$2,281.79''.

4. On page 25388, in Table 4: Regression Coefficients for Calculating Case-Mix Relative Weights, the table is corrected as follows:

TABLE 4.—REGRESSION COEFFICIENTS FOR CALCULATING CASE-MIX RELATIVE WEIGHTS

Intercept (constant for all case mix groups)	$1,276.66

TABLE 4.—REGRESSION COEFFICIENTS FOR CALCULATING CASE-MIX RELATIVE WEIGHTS—Continued

1st and 2nd Episodes, 0 to 13 Therapy Visits	
C2	384.11
C3	869.55
F2	221.43
F3	382.50
S2 (6 therapy visits)	504.49
S3 (7–9 therapy visits)	943.50
S4 (10 therapy visits)	1,387.86
S5 (11–13 therapy visits)	1,771.84
1st and 2nd Episodes, 14 to 19 Therapy Visits	
Constant	2,191.26
C2	539.55
C3	1,257.78
F2	270.79
F3	429.54
S2 (16–17 therapy visits)	429.35
S3 (18–19 therapy visits)	705.26
3rd+ Episodes, 0 to 13 Therapy Visits	
Constant	212.85
C2	140.52
C3	619.33
F2	418.51
F3	825.67
S2 (6 therapy visits)	651.76
S3 (7–9 therapy visits)	1,093.13
S4 (10 therapy visits)	1,521.27
S5 (11–13 therapy visits)	1,907.93
3rd+ Episodes, 14 to 19 Therapy Visits	
Constant	2,198.69
C2	678.75
C3	1,405.22
F2	394.26
F3	693.30
S2 (16–17 therapy visits)	294.71
S3 (18–19 therapy visits)	719.09
All Episodes, 20+ Therapy Visits	
Constant	4,033.07
C2	583.74
C3	1,396.22
F2	490.14
F3	1,052.59

5. On page 25389, in the first column,

a. In line 3, the word ''two'' is deleted.

b. In line 3, the word ''adjustments'' is corrected to read ''adjustment''.

6. On page 25389, in the second column,

a. In line 1, the words ''and the'' is deleted.

b. In line 2, the phrase ''adjustment for nominal changes in case-'' is deleted.

7. On page 25389, in the third column,

a. In line 1, the words ''mix coding'' is deleted.

b. In line 1, the word ''are'' is corrected to read ''is''.

8. On pages 25389–25392, in Table 5: Case Mix Groups, Average Cost, and

Case Mix Weight, the table is corrected to read as follows:

TABLE 5.—CASE-MIX GROUPS, AVERAGE COST, AND CASE-MIX WEIGHT

Severity level for each dimension				
Clinical	Functional	Services utilization	Average cost	Case-mix weight
1st and 2nd Episodes, 0 to 13 Therapy Visits+C47				
C1	F1	S1	$1,276.66	0.5549
C1	F1	S2	1,781.15	0.7742
C1	F1	S3	2,220.16	0.9650
C1	F1	S4	2,664.52	1.1582
C1	F1	S5	3,048.51	1.3251
C1	F2	S1	1,498.09	0.6512
C1	F2	S2	2,002.59	0.8705
C1	F2	S3	2,441.60	1.0613
C1	F2	S4	2,885.95	1.2544
C1	F2	S5	3,269.94	1.4213
C1	F3	S1	1,659.16	0.7212
C1	F3	S2	2,163.65	0.9405
C1	F3	S3	2,602.66	1.1313
C1	F3	S4	3,047.02	1.3244
C1	F3	S5	3,431.00	1.4914
C2	F1	S1	1,660.77	0.7219
C2	F1	S2	2,165.26	0.9412
C2	F1	S3	2,604.27	1.1320
C2	F1	S4	3,048.63	1.3251
C2	F1	S5	3,432.61	1.4921
C2	F2	S1	1,882.20	0.8181
C2	F2	S2	2,386.69	1.0374
C2	F2	S3	2,825.70	1.2282
C2	F2	S4	3,270.06	1.4214
C2	F2	S5	3,654.04	1.5883
C2	F3	S1	2,043.27	0.8881
C2	F3	S2	2,547.76	1.1074
C2	F3	S3	2,986.77	1.2983
C2	F3	S4	3,431.12	1.4914
C2	F3	S5	3,815.11	1.6583
C3	F1	S1	2,146.21	0.9329
C3	F1	S2	2,650.71	1.1522
C3	F1	S3	3,089.72	1.3430
C3	F1	S4	3,534.07	1.5362
C3	F1	S5	3,918.06	1.7031
C3	F2	S1	2,367.65	1.0291
C3	F2	S2	2,872.14	1.2484
C3	F2	S3	3,311.15	1.4393
C3	F2	S4	3,755.50	1.6324
C3	F2	S5	4,139.49	1.7993
C3	F3	S1	2,528.71	1.0992
C3	F3	S2	3,033.21	1.3184
C3	F3	S3	3,472.22	1.5093
C3	F3	S4	3,916.57	1.7024
C3	F3	S5	4,300.56	1.8693
1st and 2nd Episodes, 14 to 19 Therapy Visits				
C1	F1	S1	3,467.92	1.5074
C1	F1	S2	3,897.27	1.6940
C1	F1	S3	4,173.18	1.8140
C1	F2	S1	3,738.71	1.6251
C1	F2	S2	4,168.06	1.8117
C1	F2	S3	4,443.97	1.9317
C1	F3	S1	3,897.46	1.6941
C1	F3	S2	4,326.81	1.8807
C1	F3	S3	4,602.72	2.0007
C2	F1	S1	4,007.46	1.7419
C2	F1	S2	4,436.82	1.9285
C2	F1	S3	4,712.73	2.0485
C2	F2	S1	4,278.26	1.8596
C2	F2	S2	4,707.61	2.0463
C2	F2	S3	4,983.52	2.1662
C2	F3	S1	4,437.00	1.9286

TABLE 5.—CASE-MIX GROUPS, AVERAGE COST, AND CASE-MIX WEIGHT—Continued

Severity level for each dimension				
Clinical	Functional	Services utilization	Average cost	Case-mix weight
C2	F3	S2	4,866.36	2.1153
C2	F3	S3	5,142.26	2.2352
C3	F1	S1	4,725.69	2.0541
C3	F1	S2	5,155.05	2.2407
C3	F1	S3	5,430.95	2.3607
C3	F2	S1	4,996.48	2.1718
C3	F2	S2	5,425.84	2.3584
C3	F2	S3	5,701.75	2.4784
C3	F3	S1	5,155.23	2.2408
C3	F3	S2	5,584.59	2.4274
C3	F3	S3	5,860.49	2.5474
3rd+ Episodes, 0 to 13 Therapy Visits				
C1	F1	S1	1,489.51	0.6474
C1	F1	S2	2,141.27	0.9307
C1	F1	S3	2,582.64	1.1226
C1	F1	S4	3,010.78	1.3087
C1	F1	S5	3,397.44	1.4768
C1	F2	S1	1,908.02	0.8294
C1	F2	S2	2,559.78	1.1127
C1	F2	S3	3,001.15	1.3045
C1	F2	S4	3,429.29	1.4906
C1	F2	S5	3,815.95	1.6587
C1	F3	S1	2,315.18	1.0063
C1	F3	S2	2,966.94	1.2896
C1	F3	S3	3,408.31	1.4815
C1	F3	S4	3,836.46	1.6676
C1	F3	S5	4,223.12	1.8357
C2	F1	S1	1,630.03	0.7085
C2	F1	S2	2,281.79	0.9918
C2	F1	S3	2,723.16	1.1837
C2	F1	S4	3,151.31	1.3698
C2	F1	S5	3,537.97	1.5378
C2	F2	S1	2,048.54	0.8904
C2	F2	S2	2,700.30	1.1737
C2	F2	S3	3,141.67	1.3656
C2	F2	S4	3,569.81	1.5517
C2	F2	S5	3,956.47	1.7198
C2	F3	S1	2,455.71	1.0674
C2	F3	S2	3,107.47	1.3507
C2	F3	S3	3,548.84	1.5426
C2	F3	S4	3,976.98	1.7287
C2	F3	S5	4,363.64	1.8967
C3	F1	S1	2,108.84	0.9166
C3	F1	S2	2,760.60	1.1999
C3	F1	S3	3,201.97	1.3918
C3	F1	S4	3,630.11	1.5779
C3	F1	S5	4,016.77	1.7460
C3	F2	S1	2,527.34	1.0986
C3	F2	S2	3,179.10	1.3819
C3	F2	S3	3,620.47	1.5737
C3	F2	S4	4,048.62	1.7598
C3	F2	S5	4,435.28	1.9279
C3	F3	S1	2,934.51	1.2755
C3	F3	S2	3,586.27	1.5588
C3	F3	S3	4,027.64	1.7507
C3	F3	S4	4,455.78	1.9368
C3	F3	S5	4,842.44	2.1049
3rd+ Episodes, 14 to 19 Therapy Visits				
C1	F1	S1	3,475.35	1.5106
C1	F1	S2	3,770.07	1.6387
C1	F1	S3	4,194.44	1.8232
C1	F2	S1	3,869.61	1.6820
C1	F2	S2	4,164.33	1.8101
C1	F2	S3	4,588.70	1.9946
C1	F3	S1	4,168.65	1.8120
C1	F3	S2	4,463.37	1.9401

TABLE 5.—CASE-MIX GROUPS, AVERAGE COST, AND CASE-MIX WEIGHT—Continued

Severity level for each dimension				
Clinical	Functional	Services utilization	Average cost	Case-mix weight
C1	F3	S3	4,887.74	2.1246
C2	F1	S1	4,154.10	1.8057
C2	F1	S2	4,448.82	1.9338
C2	F1	S3	4,873.19	2.1182
C2	F2	S1	4,548.37	1.9770
C2	F2	S2	4,843.08	2.1051
C2	F2	S3	5,267.45	2.2896
C2	F3	S1	4,847.40	2.1070
C2	F3	S2	5,142.12	2.2351
C2	F3	S3	5,566.49	2.4196
C3	F1	S1	4,880.57	2.1214
C3	F1	S2	5,175.29	2.2495
C3	F1	S3	5,599.66	2.4340
C3	F2	S1	5,274.84	2.2928
C3	F2	S2	5,569.55	2.4209
C3	F2	S3	5,993.92	2.6054
C3	F3	S1	5,573.87	2.4228
C3	F3	S2	5,868.59	2.5509
C3	F3	S3	6,292.96	2.7354
All Episodes, 20+ Therapy Visits				
C1	F1	S1	5,309.73	2.3080
C1	F1	S1	5,799.87	2.5210
C1	F1	S1	6,362.32	2.7655
C2	F2	S1	5,893.47	2.5617
C2	F2	S1	6,383.61	2.7748
C2	F2	S1	6,946.06	3.0192
C3	F3	S1	6,705.95	2.9149
C3	F3	S1	7,196.09	3.1279
C3	F3	S1	7,758.55	3.3724

9. On pages 25430–25431, in Table 12a: NRS Case-Mix Adjustment Variables and Scores, the table is corrected to read as follows:

TABLE 12a.—NRS CASE-MIX ADJUSTMENT VARIABLES AND SCORES

	Description	Score
Selected Skin Conditions:		
1	Primary diagnosis = Anal fissure, fistula and abscess	19
2	Primary diagnosis = Cellulitis and abscess	13
3	Primary diagnosis = Gangrene	10
4	Primary diagnosis = Malignant neoplasms of skin	16
5	Primary diagnosis = Non-pressure and non-stasis ulcers	10
6	Primary diagnosis = Other infections of skin and subcutaneous tissue	19
7	Primary diagnosis = Post-operative Complications 1	32
8	Primary diagnosis = Post-operative Complications 2	23
9	Primary diagnosis = Traumatic Wounds and Burns	16
10	Other diagnosis = Anal fissure, fistula and abscess	8
11	Other diagnosis = Cellulitis and abscess	6
12	Other diagnosis = Gangrene	11
13	Other diagnosis = Non-pressure and non-stasis ulcers	8
14	Other diagnosis = Other infections of skin and subcutaneous tissue	7
15	Other diagnosis = Post-operative Complications 1	15
16	Other diagnosis = Post-operative Complications 2	15
17	Other diagnosis = Traumatic Wounds and Burns	7
18	M0450 = 1 pressure ulcer, stage 1 or 2	12
19	M0450 = 2 or 3 pressure ulcers, stage 1 or 2	20
20	M0450 = 4+ pressure ulcers, stage 1 or 2	30
21	M0450 = 1 pressure ulcer, stage 3	31
22	M0450 = 2 pressure ulcers, stage 3	41
23	M0450 = 3+ pressure ulcers, stage 3	57
24	M0450 = 1 pressure ulcer, stage 4	52
25	M0450 = 2 pressure ulcers, stage 4	80
26	M0450 = 3+ pressure ulcers, stage 4	104
27	M0450e = 1(unobserved pressure ulcer(s))	16

TABLE 12a.—NRS CASE-MIX ADJUSTMENT VARIABLES AND SCORES—Continued

	Description	Score
28	M0476 = 2 (status of most problematic stasis ulcer: early/partial granulation)	18
29	M0476 = 3 (status of most problematic stasis ulcer: not healing)	28
30	M0488 = 3 (status of most problematic surgical wound: not healing)	18
31	M0488 = 2 (status of most problematic surgical wound: early/partial granulation)	5
Other Clinical Factors:		
32	M0550 = 1 (ostomy not related to inpt stay/no regimen change)	21
33	M0550 = 2 (ostomy related to inpt stay/regimen change)	35
34	Any ''Selected Skin Conditions'' AND M0550 = 1 (ostomy not related to inpt stay/no regimen change)	22
35	Any ''Selected Skin Conditions'' AND M0550 = 2 (ostomy related to inpt stay/regimen change)	7
36	M0250 (Therapy at home) = 1 (IV/Infusion)	11
37	M0470 = 2 or 3 (2 or 3 stasis ulcers)	17
38	M0470 = 4 (4 stasis ulcers)	34
39	M0520 = 2 (patient requires urinary catheter)	17

10. On page 25444, after Table 23b entitled ''Proposed National 60–Day Episode Amounts Updated by the Estimated Home Health Market Basket Update for CY 2008, Before Case-Mix Adjustment, Wage Index Adjustment Based on the Site of Service for the Beneficiary or Applicable Payment Adjustment for Episodes Beginning and Ending in CY 2008,'' in the first column, in the first full paragraph, in lines 14 through 43, the sentence ''Therefore, to calculate an episode's prospective payment amount * * *'' and ending with the sentence ''The resulting amount is the national case-mix and wage adjusted national standardized 60-day episode payment rate for that particular episode'' is corrected to read as follows: ''To calculate an episode's prospective payment amount, take the non-adjusted national standardized 60-day episode payment rate and multiply it by the appropriate case-mix weight from Table 5 of this rule. Next, multiply the case-mix adjusted national standardized 60-day episode payment by the labor portion (77.082 percent); multiply this result by the appropriate wage index factor listed in Addendum A or B to wage-adjust the 60-day episode payment. Next multiply the case-mix adjusted national standardized 60-day episode payment by 22.918 percent to compute the non-labor portion. Add this result to the wage-adjusted labor portion to get the case-mix and wage adjusted national 60-day episode payment without NRS. Calculate the NRS amount by multiplying the episode's NRS weight (taken from Table 11 of this proposed rule) by the NRS conversion factor. This adjusted NRS payment is added to the case-mix and wage-adjusted national standardized 60-day episode payment. The resulting amount is the case-mix and wage-adjusted national standardized 60-day episode payment rate including NRS for that particular episode.''

11. On page 25447, in the 12th line, the figure ''0.22198'' is corrected to read ''0.22918''.

12. On page 25459, in Addendum A,

a. In the first column, in line 29, the Wage Index for ''Massachusetts'' the figure ''1.0661'' is corrected to read ''1.1662''.

b. In the second column, in line 15, the superscript ''1'' which appears after ''New Jersey'' is deleted.

c. In the third column, in lines 17 through 22, the footnote ''1'' at the end of Addendum A, the sentence ''All counties within the State are classified as rural. No short-term acute care hospitals are located in the area(s)'' is corrected to read as follows: ''There are no short-term, acute care hospitals located in rural area(s) in Massachusetts from which to calculate a wage index for CY 2008.''

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 12, 2007.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 07–2987 Filed 6–13–07; 11:55 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

RIN 0991–AB23

Medicare and State Health Care Programs: Fraud and Abuse; Clarification of Terms and Application of Program Exclusion Authority for Submitting Claims Containing Excessive Charges

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: On September 15, 2003, we published a notice of proposed rulemaking (68 FR 53939) soliciting public comments regarding further guidance on OIG's exclusion authority under section 1128(b)(6)(A) of the Social Security Act and 42 CFR 1001.701 of our regulations. Having considered the public comments and for the reasons explained below, we are not promulgating a final rule.

DATES: The notice of proposed rulemaking published on September 15, 2003 at 68 FR 53939 is withdrawn as of June 18, 2007.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, Office of External Affairs, (202) 619–0089.

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Legal Framework

Section 1128(b)(6)(A) of the Social Security Act (the Act) provides that the Secretary may exclude any individual or entity from participation in any Federal health care program if the Secretary determines that the individual or entity:

''has submitted or caused to be submitted bills or requests for payment (where such

bills or requests are based on charges or cost) under title XVIII [of the Act] or a State health care program containing charges (or, in applicable cases, requests for payment of costs) for items or services furnished substantially in excess of such individual's or entity's usual charges (or, in applicable cases, substantially in excess of such individual's or entity's costs) for such items or services, unless the Secretary finds there is good cause for such bills or requests containing such charges or costs.''

The Secretary has specifically delegated the authority under section 1128 of the Act to the Department's Office of Inspector General (OIG) (53 FR 12993, April 20, 1988).

The regulations interpreting section 1128(b)(6)(A) of the Act are set forth at 42 CFR 1001.701. Under § 1001.701(a)(1), OIG may exclude an individual or entity that has ''[s]ubmitted, or caused to be submitted, bills or requests for payments under Medicare or any of the State health care programs containing charges or costs for items or services furnished that are substantially in excess of such individual's or entity's usual charges or costs for such items or services.'' In addition, § 1001.701(c)(1) provides that an individual or entity will not be excluded for ''[s]ubmitting, or causing to be submitted, bills or requests for payment that contain charges or costs substantially in excess of usual charges or costs when such charges or costs are due to unusual circumstances or medical complications requiring additional time, effort, expense or other good cause.'' The regulations at § 1001.701(d)(1) further provide that an exclusion imposed under section 1128(b)(6)(A) of the Act will be for a period of 3 years, unless certain aggravating or mitigating circumstances exist.

B. The Proposed Rule

OIG published a notice of proposed rulemaking on September 15, 2003 to provide further guidance on OIG's exclusion authority under section 1128(b)(6)(A) of the Act and 42 CFR 1001.701 (68 FR 53939).[1] We noted in the preamble to the proposed rule that, notwithstanding the increasing use of fee schedules by Federal health care programs, many payment provisions of the Act continue to be charge-based in that programs are only obligated to pay the lower of the actual charge or the fee schedule amount. Therefore, section 1128(b)(6)(A) of the Act could still apply to bills and requests for payment submitted for items or services for which payment is based directly or indirectly on the provider's charges or costs, especially in Medicare Part B, including, but not limited, to clinical laboratory services, durable medical equipment, medical supplies, and drugs (65 FR 53939, 53940).[2]

In the notice of proposed rulemaking, we proposed to define the term ''usual charges'' by using one of two alternative approaches that we described in the proposed rule—either the provider's average charge or the provider's median charge (the ''fiftieth percentile'' method). We proposed that a provider's ''usual charges'' would include: (1) Charges billed directly to cash paying patients; (2) the amounts billed to patients covered by indemnity insurers with which the provider has no contractual arrangement; (3) any fee-for-service rate that a provider contractually agrees to accept from any payor, including any discounted fee-for-service rates negotiated with managed care plans; (4) rates offered to the Department of Defense for its various health care plans, including TriCare; and (5) charges of the provider's affiliated entities. This approach recognized the increasing prevalence of contractually negotiated rates with private customers. We also specifically proposed that certain charges would not be included when determining the usual charge, such as (1) charges for services provided to uninsured patients free of charge or at a substantially reduced rate; (2) capitated payments; (3) rates offered under hybrid fee-for-service arrangements whereby more than 10 percent of the individual's or entity's maximum potential compensation could be paid in the form of a bonus and/or withhold payment; and (4) fees set by Medicare, State health care programs, and other Federal health care programs, subject to certain limitations.

In addition, we proposed to defined the term ''substantially in excess'' for the purposes of section 1128(b)(6)(A) of the Act to mean only those charges or costs that are more than 120 percent of an individual's or entity's usual charges or costs. In other words, providers submitting charges or costs that were equal to or less than 120 percent of their usual charges or costs would not be subject to OIG's permissive exclusion authority under section 1128(b)(6)(A) of the Act. Notwithstanding the 120 percent benchmark, exclusion would remain within the discretion of OIG for those providers submitting charges or costs to Medicare or State health care programs more than 120 percent of the provider's usual charges or costs. We specifically sought public comment on the proposed definition of ''substantially in excess'' and the 120 percent benchmark. We also solicited comments on whether the benchmark should vary based on certain factors (e.g., whether the benchmark should be lower for some providers than others based on the type or location of a provider or the reimbursement methodology applicable to the provider or whether the benchmark should take into account certain market considerations) and, if so, how and why (68 FR 53939, 53942).

We also proposed to clarify the statutory ''good cause'' exception by amending § 1001.701(c)(1) to provide that an individual or entity would not be excluded for submitting, or causing to be submitted, bills or requests for payment that contain charges or costs substantially in excess of usual charges or costs when such charges or costs are due to (1) unusual circumstances or medical complications requiring additional time, effort, or expense; (2) increased costs associated with serving Medicare or Medicaid beneficiaries; or (3) other good cause.

We received 323 timely comments to the proposed rule from a cross-section of interested parties. Some commenters supported the proposed rule, noting that certain providers were continuing to charge Medicare substantially in excess of their usual charges or costs and that, in some cases, these practices resulted in unfair competition. Other commenters considered the proposed rule unnecessary given Medicare's increasing reliance on prospective payment and fee schedules for reimbursement of providers, while other commenters thought that our proposed definitions of ''usual charges'' and ''substantially in excess'' were flawed or unworkable. In particular, some commenters argued that the 120 percent benchmark was too low or arbitrary, and that a single, fixed benchmark was not appropriate across all types of providers or across all items and services.

In addition, several commenters expressed concern that finalizing the rule might have the unintended consequence of increasing health care costs generally. These commenters explained that, to comply with the rule, providers that were charging Medicare and State health care programs in excess of the 120 percent benchmark could either lower charges to Medicare and State health care programs or increase charges to other payors. The commenters were concerned that some providers would opt to raise their prices to other payors rather than lower their

[1] For prior OIG rulemaking history, see 68 FR 53939, 53940.

[2] For convenience, the term ''provider'' in this notice of withdrawal of proposed rulemaking includes both suppliers and providers.

charges to Medicare and State health care programs. This behavior, the commenters noted, could result in increased health care costs across the health care industry.

C. Determination Not To Promulgate a Final Rule

We have carefully reviewed the public comments and considered the issues raised by promulgating a final rule that would define the terms ''substantially in excess'' and ''usual charges,'' and clarify the ''good cause'' exception in the manner proposed in the notice of proposed rulemaking. For the reasons set forth below, we decline to promulgate a final rule.

First, we have concluded that we do not have sufficient information at this time to establish a single, fixed numerical benchmark for ''substantially in excess'' that could be applied equitably across health care sectors and across items and services, as we originally proposed. Our intent in proposing the 120 percent benchmark was to create a bright line standard by which all providers could evaluate their usual charges. Upon reviewing the comments, we believe that a single benchmark for ''substantially in excess'' is unadvisable at this time. We believe it is more appropriate to continue to evaluate billing patterns of individuals and entities on a case-by-case basis.

Second, based on our review of the comments, we have determined that there is insufficient information at this time to assure ourselves that a final rule would not have the unintended effect of increasing health care costs across the industry.

OIG remains concerned about disparities in the amounts charged to Medicare and Medicaid when compared to private payers. While Medicare pays for many items and services using fee schedules that serve as payment ceilings, many of these fee schedules are infrequently updated or may be updated using methods that do not adequately capture prevailing market rates for the same items and services. We recognize that, in most cases, these fee schedules are intended to approximate a reasonable payment amount. However, fee schedules are administered prices that, in some situations, may quickly become out-dated. As we noted in the preamble to the September 15, 2003 proposed rule:

''When market forces cause a provider's usual charge to most of its customers to drop substantially below the Medicare fee schedule allowance, some providers continue to charge Medicare at least the fee schedule amount. In this situation, the provider creates a two-tier pricing structure with Medicare paying more than other customers. Unless the price differential can be justified by costs that are uniquely associated with the Medicare program, the provider is simply overcharging Medicare. In such circumstances, section 1128(b)(6)(A) of the Act obligates providers to either charge Medicare and Medicaid approximately the same amount as they usually charge their other purchasers for the same items or services or risk exclusion from all Federal health care programs.'' (68 FR 53939, 53940).

While the principal protection against overpaying for items and services furnished to Medicare and Medicaid beneficiaries is timely and accurate updating of the fee schedules, OIG continues to believe that section 1128(b)(6)(A) of the Act provides useful backstop protection for the public fisc from providers that routinely charge Medicare or Medicaid substantially more than their other customers (68 FR 53939, 53941). We will continue to evaluate billing patterns of individuals and entities on a case-by-case basis and to use all tools available to OIG to address instances where Medicare or Medicaid are charged substantially more than other payors, without good cause.

D. Application of Section 1128(b)(6)(A) of the Act to Discounts to the Uninsured

In the past, some providers have expressed concern that offering discounts to uninsured patients or other patients who cannot afford their care might skew the provider's ''usual charges'' for purposes of section 1128(b)(6)(A) of the Act and possibly subject them to exclusion. OIG has never excluded or contemplated excluding any provider for offering *bona fide* discounts to uninsured patients or to other patients who cannot afford the provider's care. OIG believes that section 1128(b)(6)(A) of the Act can be reasonably interpreted to allow providers to carve out discounts to these patients when calculating their ''usual charges'' to other customers. To this end, the September 15, 2003 proposed rule made clear that free or substantially reduced prices offered to such patients would not be factored into a provider's usual charges for purposes of the exclusion authority (68 FR 53939, 53941). To further assure the industry, we issued guidance on our Web site on February 19, 2004 specifically providing that, pending a decision with respect to the September 15, 2003 proposed rule, it would continue to be OIG's enforcement policy ''that, when calculating their 'usual charges' for purposes of section 1128(b)(6)(A), individuals and entities do not need to consider free or substantially reduced charges to (i) uninsured patients or (ii) underinsured patients who are self-paying patients for the items or services furnished.'' (*http://oig.hhs.gov/fraud/docs/alertsandbulletins/2004/FA021904hospitaldiscounts.pdf*)

Nothing in this withdrawal notice affects OIG's long-standing interpretation of the statute in this regard, and it continues to be OIG's position that, when calculating their ''usual charges'' for purposes of section 1128(b)(6)(A) of the Act, individuals and entities do not need to consider free or substantially reduced charges to (i) uninsured patients or (ii) underinsured patients who are self-pay patients for the items or services furnished.

II. Withdrawal of Notice of Proposed Rulemaking

Accordingly, the notice of proposed rulemaking that was published in the **Federal Register** on September 15, 2003 (68 FR 53939) is withdrawn.

III. Regulatory Impact Analysis

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule, and therefore, is not covered under Executive Order 12866 or the Regulatory Flexibility Act (5 U.S.C. 601–612).

List of Subjects in 42 CFR Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicaid, Medicare.

Dated: May 10, 2007.

Daniel R. Levinson,

Inspector General.

Approved: May 25, 2007.

Michael O. Leavitt,

Secretary.

[FR Doc. E7–11663 Filed 6–15–07; 8:45 am]

BILLING CODE 4150–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7802]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for

the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Polk County, North Carolina and Incorporated Areas				
Bear Creek	At the confluence with North Pacolet River	None	+1,395	Polk County (Unincorporated Areas).
	Approximately 870 feet upstream of Charleston Harbor Drive.	None	+1,564	
Big Fall Creek	At the confluence with North Pacolet River	None	+1,102	Polk County (Unincorporated Areas).
	Approximately 1,270 feet upstream of railroad	None	+1,682	
Brights Creek	At the confluence with Green River	None	+922	Polk County (Unincorporated Areas).
	Approximately 700 feet upstream of the confluence of Rash Creek.	None	+937	
Britten Creek	At the confluence with Green River	None	+838	Polk County (Unincorporated Areas).
	Approximately 170 feet upstream of Lake Adger Road (State Road 1138).	None	+1,108	
Broad River	On the upstream side of Poors Ford Road (State Road 1004).	None	+732	Polk County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence of Green River.	None	+739	
Collinsville Creek	At the confluence with Hughes Creek	None	+858	Polk County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Landrum Road (State Road 1520).	None	+996	
Tributary 4	At the confluence with Collinsville Creek	None	+961	Polk County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Collinsville Creek.	None	+982	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Green River	At the confluence with Broad River	None	+736	Polk County (Unincorporated Areas).
	At the Polk/Henderson County boundary	None	+1,442	
Tributary 17	At the confluence with Green River	None	+784	Polk County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Green River.	None	+798	
Tributary 29	At the confluence with Green River	None	+810	Polk County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Green River.	None	+868	
Tributary 30	At the confluence with Green River	None	+817	Polk County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Green River.	None	+839	
Tributary 36	At the confluence with Green River	None	+835	Polk County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Green River.	None	+854	
Tributary 38	At the confluence with Green River	None	+844	Polk County (Unincorporated Areas).
	Approximately 1,220 feet upstream of Katydid Lane	None	+856	
Green River Tributary of Tributary 30.	At the confluence with Green River Tributary	None	+817	Polk County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Green River Tributary 30.	None	+844	
Greens Creek	At the confluence with White Oak Creek	None	+745	Polk County (Unincorporated Areas).
	Approximately 350 feet upstream of East Green Creek Drive (State Road 1340).	None	+772	
Hensons Creek	At the Rutherford/Polk County boundary	None	+823	Polk County (Unincorporated Areas).
	Approximately 60 feet upstream of the Polk/Rutherford County boundary.	None	+824	
Hooper Creek	Approximately 500 feet downstream of the most downstream North Carolina/South Carolina State boundary.	None	+811	Polk County (Unincorporated Areas).
	Approximately 320 feet upstream of Henderson Road (State Road 1525).	None	+1,034	
Horse Creek	At the confluence with North Pacolet River	None	+879	Polk County (Unincorporated Areas)
	Approximately 70 feet downstream of Three Bridges Drive.	None	+2,594	Town of Columbus.
Hughes Creek	At the North Carolina/South Carolina State boundary.	None	+803	Polk County (Unincorporated Areas).
	Approximately 270 feet upstream of Landrum Road (State Road 1520).	None	+894	
Joels Creek	At the confluence with North Pacolet River	None	+1,675	Polk County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Person Falls Road (State Road 1102).	None	+1,891	City of Saluda.
Little Creek (into North Pacolet River).	At the confluence with North Pacolet River	None	+893	Polk County (Unincorporated Areas).
	Approximately 300 feet upstream of North Trade Street.	None	+1,005	Town of Tryon.
Little Creek (into Vaughn Creek).	At the confluence with Vaughn Creek	None	+972	Town of Tryon.
	Approximately 1,020 feet upstream of Jervey Road	None	+1,022	
Little White Oak Creek	At the confluence with White Oak Creek	None	+838	Polk County (Unincorporated Areas).
	Approximately 550 feet upstream of NC Highway 9	None	+974	
Machine Creek	At the confluence with White Oak Creek	None	+827	Polk County (Unincorporated Areas).
	Approximately 500 feet upstream of U.S. Highway 74.	None	+848	
Mill Creek (into White Oak Creek).	At the confluence with White Oak Creek	None	+755	Polk County (Unincorporated Areas).
	Approximately 1,250 feet upstream of Coxe Road (State Road 1005).	None	+756	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
North Pacolet River	At the North Carolina/South Carolina State boundary.	None	+837	Polk County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence of Joels Creek.	None	+1,761	Town of Tryon.
Tributary 18	At the confluence with North Pacolet River	None	+917	Polk County (Unincorporated Areas). Town of Tryon.
	Approximately 120 feet downstream of Howard Gap Road (State Road 1122).	None	+924	
Tributary 20	At the confluence with North Pacolet River	None	+935	Polk County (Unincorporated Areas).
	Approximately 300 feet upstream of Baker Road (State Road 1124).	None	+948	
Ostin Creek	At the confluence with Green River	None	+919	Polk County (Unincorporated Areas).
	Approximately 200 feet upstream of Cow Crossing Lane.	None	+1,022	
Rash Creek	At the confluence with Brights Creek	None	+935	Polk County (Unincorporated Areas).
	Approximately 750 feet upstream of the confluence with Brights Creek.	None	+938	
South Branch Little White Oak Creek.	At the confluence with Little White Oak Creek	None	+876	Polk County (Unincorporated Areas).
	Approximately 2.3 miles upstream of NC Highway 9	None	+926	
Vaughn Creek	At the confluence with North Pacolet River	None	+889	Polk County (Unincorporated Areas).
	Approximately 630 feet upstream of the confluence of Little Creek (into Vaughn Creek).	None	+989	Town of Tryon.
Tributary 1	At the confluence with Vaughn Creek	None	+904	Town of Tryon.
	Approximately 0.8 mile upstream of Vaughn Street	None	+973	
Tributary 2	At the confluence with Vaughn Creek	None	+972	Town of Tryon.
	Approximately 850 feet upstream of Jervey Road	None	+997	
Walnut Creek	At the confluence with Green River	None	+802	
	Approximately 60 feet upstream of NC Highway 9	None	+1,058	
Wheat Creek	At the confluence with Green River	None	+768	Polk County (Unincorporated Areas).
	Approximately 500 feet upstream of Ponder Road (State Road 1329).	None	+817	
White Oak Creek	At the confluence with Green River	None	+743	Polk County (Unincorporated Areas).
	Approximately 40 feet downstream of Smith Dairy Road (State Road 1528).	None	+902	
Wolfe Creek	At the confluence with North Pacolet River	None	+842	Polk County (Unincorporated Areas).
	Approximately 460 feet upstream of Interstate Highway 26.	None	+877	

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

ADDRESSES

City of Saluda

Maps are available for inspection at Saluda City Hall, 6 East Main Street, Saluda, North Carolina.
Send comments to The Honorable Lee H. Clippard, Sr., Mayor of the City of Saluda, P.O. Box 248, Saluda, North Carolina 28773.

Town of Columbus

Maps are available for inspection at Columbus Town Hall, 95 Walker Street, Columbus, North Carolina.
Send comments to The Honorable Kathleen McMillian, Mayor of the Town of Columbus, P.O. Box 146, Columbus, North Carolina 28722.

Town of Tryon

Maps are available for inspection at Tryon City Hall, 301 North Trade Street, Tryon, North Carolina.
Send comments to The Honorable J. Alan Peoples, Mayor of the Town of Tryon, 301 North Trade Street, Tryon, North Carolina 28782.

Polk County (Unincorporated Areas)

Maps are available for inspection at Polk County Planning Department, 40 Courthouse Street, Columbus, North Carolina.
Send comments to Mr. Ryan Whitson, Polk County Manager, P.O. Box 308, Columbus, North Carolina 28722.

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

Dated: June 4, 2007.

David I. Maurstad,

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

[FR Doc. E7–11640 Filed 6–15–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

RIN 0648–AX72

Certification of Nations Whose Fishing Vessels Are Engaged in Illegal, Unreported, or Unregulated Fishing or Bycatch of Protected Living Marine Resources

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

ACTION: Notice of public input sessions; request for comments.

SUMMARY: NMFS published an advanced notice of proposed rulemaking (ANPR) to announce that it is developing certification procedures to address illegal, unreported, or unregulated (IUU) fishing activities and bycatch of protected living marine resources pursuant to the High Seas Driftnet Fishing Moratorium Protection Act. This notice is to announce three public input sessions to discuss and collect comments on the issues described in the ANPR.

DATES: Public input sessions will be held in July of 2007. For specific dates and times, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Public input sessions will be held in Silver Spring, MD; Long Beach, CA; and Seattle, WA. For details, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Christopher Rogers (ph. 301–713–9090, fax 301–713–9106, e-mail *christopher.rogers@noaa.gov*).

SUPPLEMENTARY INFORMATION: On June 11, 2007 (72 FR 32052), NMFS published an advance notice of proposed rulemaking to announce that it is developing certification procedures to address illegal, unreported, or unregulated (IUU) fishing activities and bycatch of protected living marine resources pursuant to the High Seas Driftnet Fishing Moratorium Protection Act.

Request for Comments

NMFS is seeking advance public comment on the development of these procedures and on the sources and types of information to be considered in the process. Three opportunities for public input have been arranged to provide the public an opportunity to comment. Comments received on the ANPR will assist NMFS in developing a proposed rule.

Dates, Times, and Locations

The public input sessions will be held as follows:

1. Monday, July 2, 2007, 3–5 p.m. NMFS Headquarters Science Center, SSMC4, 1310 East-West Highway, Silver Spring, MD 20910; phone 301–713–9090.
2. Thursday, July 5, 2007, 3–5 p.m. NMFS Southwest Regional Office, 501 West Ocean Boulevard, Room 3470, Long Beach, CA 90802; phone 562–980–4040.
3. Thursday, July 5, 2007, 3–5 p.m. NMFS Northwest Regional Office, 7600 Sand Point Way NE, Building 9 Auditorium, Seattle, WA 98115; phone 206–526–6150.

Special Accommodations

The sessions are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Christopher Rogers (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the session.

Dated: June 12, 2007.

Rebecca Lent,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. E7–11624 Filed 6–15–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 070522149–7154–01; I.D. 020607C]

RIN 0648–AV10

Atlantic Highly Migratory Species; Atlantic Swordfish Quotas

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

ACTION: Proposed rule; request for comments; notice of public hearings.

SUMMARY: NMFS proposes to amend the regulations governing the North and South Atlantic swordfish fisheries to implement two recommendations by the International Commission for the Conservation of Atlantic Tuna (ICCAT) (Recommendations 06–02 and 06–03). These recommendations establish baseline quotas for North and South Atlantic swordfish, respectively, and set caps on underharvest carryover. Additionally, recommendation 06–02 allows a contracting party (CPC) with a total allowable catch (TAC) allocation to make a transfer within a fishing year of up to 15 percent of its baseline allocation to other CPCs, as long as the transfer is conducted in a manner that is consistent with domestic obligations and conservation considerations. This action, if adopted, would remain in effect until ICCAT provides new recommendations for the U.S. swordfish fisheries. In addition, NMFS proposes to modify the North and South Atlantic swordfish quotas for the 2006 fishing year to account for updated landings information from the 2004 and 2005 fishing years. Finally, NMFS proposes to include the option of an internet Web site as an additional method for complying with the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category's 24 hour reporting requirement. Currently, reporting is by telephone only. NMFS solicits written comments and will hold public hearings in July 2007 to receive oral comments on these proposed actions.

DATES: Written comments on the proposed rule must be received by 5 p.m. on July 18, 2007.

The public hearing dates and times are:

1. Monday, July 9, 2007, 3–5 p.m., Silver Spring, MD.
2. Tuesday, July 10, 2007, 6–8 p.m., Fort Pierce, FL.
3. Thursday, July 12, 2007, 3–5 p.m., Gloucester, MA.

Additional public hearings will be considered upon request and must be received by 5 p.m. on June 29, 2007 (see **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES: The public hearing locations are:

1. Silver Spring—National Oceanic and Atmospheric Administration, SSMC III, 1311B, 1301 East-West Highway, Silver Spring, MD 20910;
2. Fort Pierce—Fort Pierce Library, 101 Melody Lane, Fort Pierce, FL 34950; and
3. Gloucester—National Oceanic and Atmospheric Administration, Northeast

Regional Office, One Blackburn Drive, Gloucester, MA 01930.

Written comments on this proposed rule or the Draft Environmental Assessment/Regulatory Impact Review/ Initial Regulatory Flexibility Analysis (Draft EA/RIR/IRFA) may be submitted to Heather Ann Halter, Fisheries Management Specialist, Highly Migratory Species Management Division, using any of the following methods:

- *E-mail: SF1.020607C@noaa.gov.* Include in the subject line the following identifier: I.D. 020607C.
- *Mail:* 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Comments on Swordfish Specifications.''
- *Fax:* 301–713–1917.
- *Federal e-Rulemaking Portal: http://www.regulations.gov.*

Copies of the Draft Environmental Assessment (EA), the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), and other relevant documents are available from the Highly Migratory Species Management Division Web site at *http://www.nmfs.noaa.gov/sfa/hms.*

FOR FURTHER INFORMATION CONTACT: Heather Ann Halter or Karyl Brewster-Geisz, by phone: 301–713–2347; by fax: 301–713–1917; or by e-mail: *Heather.Halter@noaa.gov* or *Karyl.Brewster-Geisz@noaa.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the 2006 Consolidated HMS FMP. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

North Atlantic Swordfish Quota

Prior to the 2006 meeting, ICCAT conducted a stock assessment examining the North and South Atlantic swordfish populations. ICCAT's Standing Committee on Research and Statistics (SCRS) concluded fishing mortality is currently low, and that the biomass of North Atlantic swordfish has improved compared to previous stock assessments. At the beginning of 2006, the biomass of North Atlantic swordfish was estimated to be at 99 percent of the level necessary to support maximum sustainable yield (B_{MSY}). The SCRS also concluded that if the current total allowable catch (TAC) management strategy is maintained, the stock would continue to approach or attain B_{MSY}. Based on this information, ICCAT recommended the current North Atlantic swordfish TAC of 14,000 metric tons (mt) whole weight (ww), to continue through 2008. Of the 14,000 mt ww, the United States is allocated 3,907 mt ww (2,937.6 mt dressed weight (dw)) in 2007 and also in 2008 (recommendation 06–02). This allocation is the same the United States received during 2004, 2005, and 2006. However, the new ICCAT North Atlantic swordfish recommendation 06–02 limits the amount of North Atlantic swordfish underharvest that can be carried forward by all CPCs to 50 percent of the baseline quota allocation for 2007 and 2008. The United States, therefore, would be allowed a maximum of 1,468.8 mt dw that can be carried forward and added to the baseline quotas in 2007 and in the future.

In addition, recommendation 06–02 establishes a transfer provision for North Atlantic swordfish whereby CPCs may make a one-time quota transfer of up to 15 percent of their total allowable catch within a fishing year to other CPCs, consistent with domestic obligations and conservation considerations. The United States, therefore, would be allowed a one-time transfer up to 440.6 mt dw of North Atlantic swordfish to other CPCs within the 2007 and 2008 fishing years.

On May 19, 2006, NMFS published a final rule to implement the 2004 ICCAT recommendation 04–02 that extended the 2005 North Atlantic swordfish management measures until ICCAT provided recommendations for a new TAC (71 FR 29087). This final rule also adjusted the quotas for the 2004 and 2005 fishing year based on updated landings reports. Pursuant to § 635.27(c)(3)(ii), total landings below the annual North Atlantic swordfish quota shall be added to the following year's quota, with carryover to be apportioned equally between the two semi-annual fishing seasons. The 2004 preliminary reported landings used to adjust the quota for the 2005 fishing year were 1,475.0 mt dw, resulting in an underharvest of 3,718.9 mt dw. The final landings for 2004 are 1,665.1 mt dw, thus decreasing the 2004 underharvest to 3,528.8 mt dw. After deducting the 18.8 mt dw annual transfer to Canada and 169.8 mt dw of dead discards, the final carryover available from the 2004 fishing year is 3,359.1 mt dw.

This action would adjust the total available quota for the 2005 fishing year to account for the final 2004 landings information. The 2005 North Atlantic swordfish baseline quota was 2,937.6 mt dw. The baseline quota plus the final 2004 underharvest would result in a total 2005 quota of 6,296.7 mt dw. The preliminary landings for the 2005 directed and incidental fishery are 1,471.8 mt dw. In addition to these landings, the United States transferred 18.8 mt dw to Canada, resulting in an available carryover of 4,691.2 mt dw for the 2005 fishing year after deducting 114.9 mt dw of dead discards.

In this action, the underharvest from the 2005 fishing year (4,691.2 mt dw) would be added to the 2006 baseline quota (2,937.6 mt dw) for an adjusted 2006 North Atlantic swordfish quota of 7,628.8 mt dw. The reserve category would be allocated 82.7 mt dw, and the incidental category would be allocated 300 mt dw. To date, U.S. fishermen have landed approximately 928.5 mt dw. Thus, to date, approximately 6,681.5 mt dw could be available for carryover to the abbreviated 2007 fishing year (June 1, 2007 to December 31, 2007). However, since ICCAT recommendation 06–02 limits the amount of underharvest that can be carried forward to 50 percent of the initial allocation for 2007, 1,468.8 mt dw would be carried over and applied toward the directed North Atlantic swordfish category for the abbreviated 2007 fishing year. Also in this action, the United States would maintain the North Atlantic baseline quota for 2007, 2008, and future years until ICCAT changes the U.S. allocation.

South Atlantic Swordfish Quota

The SCRS also conducted a stock assessment of South Atlantic swordfish in 2006. Due to discrepancies between several of the datasets, reliable stock assessment results could not be produced. However, the SCRS noted that the total reported catches have decreased since 1995, and that the fishing mortality and biomass estimates are likely to allow for fishing at MSY. Current reported landings however are 33 percent lower than the estimated MSY.

ICCAT set the South Atlantic swordfish TAC at 17,000 mt ww for 2007, 2008, and 2009. This TAC is slightly higher than that of previous years of 15,631 mt ww in 2003, 15,776 mt ww in 2004, 15,956 mt ww in 2005, and 16,055 mt ww in 2006. Of the 17,000 mt ww, the United States is allocated 100 mt ww (75.2 mt dw) (Recommendation 06–03). As with the North Atlantic swordfish recommendation, recommendation 06–03 establishes a cap on the amount of underharvest that can be carried forward during the defined management period (2007–2009). For South Atlantic

swordfish, the United States would be limited to carrying forward 100 mt ww (75.2 mt dw).

A November 23, 2004 final rule implemented the ICCAT recommendations for the South Atlantic swordfish fishery in 2003, 2004, 2005, and 2006 (69 FR 68090). As mentioned above, regulations require that landings below the annual South Atlantic quota shall be added to the following year's quota. The 2004 South Atlantic swordfish landings were below the adjusted 2004 quota. Therefore, this action proposes to carry over the final 2004 underharvest to adjust the carryover available for the 2005 fishing year.

The adjusted quota for the 2004 fishing year was 334.3 mt dw (75.2 mt dw baseline plus 259.1 mt dw carried over from the 2003 fishing year). The final 2004 landings for South Atlantic swordfish are 15 mt dw. Therefore, this action proposes to adjust the 2005 baseline quota (75.2 mt dw) with the carryover from 2004 fishing year (319.3 mt dw), increasing the total 2005 South Atlantic swordfish quota to 394.5 mt dw. The preliminary 2005 landings for South Atlantic swordfish are 0.0 mt dw. Therefore, this action also proposes to adjust the 2006 baseline quota (90.2 mt dw) with the carryover from the 2005 fishing year (394.5 mt dw), increasing the total 2006 South Atlantic swordfish quota to 484.7 mt dw. Since ICCAT recommendation 06–03 limits the amount of underharvest that can be carried forward to 100 mt ww for 2007, 75.2 mt dw would be carried over and applied toward the directed South Atlantic swordfish category for a total of 150.4 mt dw for the abbreviated 2007 fishing year. Also in this action, the United States would maintain the South Atlantic baseline quota for 2007, 2008, and future years until ICCAT changes the U.S. allocation.

Atlantic HMS Charter/Headboat Reporting Requirement Option

NMFS proposes to include the option of an internet Web site as an additional method for complying with the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category's 24 hour reporting requirement. Currently, reporting is by telephone only. This action is not expected to have any environmental impacts. Rather, it provides additional flexibility for fishermen to report landings. As such, it is not analyzed as an alternative but is provided in this proposed rule for public comment.

Alternatives Considered for Quotas and Underharvest Carryovers

NMFS examined two alternatives for quotas and underharvest carryovers. Alternative 1a, the no action alternative, would maintain the status quo, meaning that baseline quotas, 2,937.6 mt dw for North, and 90.2 mt dw for South Atlantic swordfish that were established May 19, 2006 (71 FR 29087), would be extended into 2007 and beyond. This alternative would incorporate recent landings updates and carry over the entire underharvest minus dead discards from the 2005 fishing year into 2006. Additionally, the underharvests from current and future fishing years (*e.g.*, 2006 and beyond) would be added to the next fishing year (*e.g.*, 2007 and beyond). Alternative 1b, the preferred alternative, would be consistent with ICCAT recommendations 06–02 and 06–03 and would establish the same baseline quota for North Atlantic swordfish as previous years (2,937.6 mt dw). The South Atlantic swordfish baseline quota would be reduced to 75.2 mt dw. Although the 2006 ICCAT recommendations for swordfish are specific for 2007 and 2008, these quotas and carryover provisions would remain in place until ICCAT issues new recommendations for the United States. Additionally, alternative 1b would establish a cap on underharvest carryover equal to 50 percent of the original quota allocation for North Atlantic swordfish. Alternative 1b would also establish a cap on the amount of South Atlantic swordfish underharvest that can be carried forward to 100 mt ww (75.2 mt dw). Under alternative 1b, the maximum allowance for carryover would be equal to 1,468.8 mt dw and 75.2 mt dw for the North and South Atlantic regions, respectively. Furthermore, 2,022.56 mt dw of the U.S. 2005 North Atlantic underharvest would be redistributed among other CPCs in 2007 (1,011.28 mt dw) and 2008 (1,011.28 mt dw). As such, the adjusted quota in 2007 would be 4,406.4 mt dw in the North Atlantic and 150.4 mt dw in the South Atlantic.

The status quo alternative 1a was not chosen because the conservation goals of ICCAT for Atlantic highly migratory species (HMS) and compliance with NMFS' statutory mandate under the Atlantic Tunas Convention Act (ATCA) would not be met.

Alternative 1b is preferred because it is consistent with the ICCAT rebuilding plan and TAC management strategy, and would comply with U.S. international commitments and ATCA.

Alternatives Considered for Quota Transfers

NMFS examined three alternatives for transfers. Alternative 2a, the no action alternative, would allocate no additional swordfish quota to the reserve category. In 2002, a reserve quota category was created for U.S. North Atlantic swordfish. At that time, 301 mt dw of North Atlantic swordfish was allocated to the reserve. The establishment of the reserve category was designed to implement an international agreement, which allowed the North Atlantic rebuilding program to remain on track. Consistent with § 635.27(c)(1)(i)(D), quota in the reserve category may be used for inseason adjustments to other fishing categories, to compensate for projected or actual overharvest in any category, for fishery independent research, or for other purposes consistent with management objectives. No additional quota has been added to the reserve category since its establishment in 2002, however, a number of transfers have been made out of the reserve, including 18.8 mt dw of North Atlantic swordfish to Canada annually since 2003 (November 23, 2004; 69 FR 68090) and 161.7 mt dw to Japan in 2002 (March 24, 2003; 68 FR 14167).

Alternative 2a would maintain the status quo, which includes the annual quota transfer from the North Atlantic swordfish reserve category quota to Canada. The adjusted quota allotted to the reserve category, as of the beginning of the 2006 fishing year, was 82.7 mt dw. Once the 18.8 mt dw transfer occurs in 2007, the reserve category would have 63.9 mt dw of quota remaining. Under the no action alternative, no additional quota would be allotted to the reserve category, and no mechanism would be established for implementing ICCAT recommendations regarding transfer provisions.

Alternative 2b, the preferred alternative, would transfer 15 percent (440.6 mt dw) of the 2007 baseline U.S. North Atlantic swordfish allocation to the reserve category. ICCAT recommendation 06–02 contains a provision to allow a contracting party with a TAC allocation to make quota transfer within a fishing year of up to 15 percent of its TAC allocation, consistent with domestic obligations and conservation considerations. The ICCAT recommendation stipulates that the quota transfer may not be used to cover underharvests, and that a contracting party that receives a quota transfer may not retransfer that quota. This alternative would transfer 15 percent (440.6 mt dw) of the 2007 U.S. North

Atlantic swordfish baseline quota directly into the reserve category. Thus, the total reserve would be 504.5 mt dw. 18.8 mt dw would continue to be transferred annually to Canada per ICCAT recommendation 06–02.

As described in alternative 2a, reserve quota may be used for inseason adjustments to other fishing categories, to compensate for projected or actual overharvest in any category, for fishery independent research, or for other purposes consistent with management objectives. In considering whether the United States would enter into an arrangement with another ICCAT contracting party, several factors would need to be taken into account, including, but not limited to, the amount of quota to be transferred, the projected ability of U.S. vessels to harvest the U.S. TAC before the end of the fishing year, the potential benefits of the transfer to U.S. fishing participants (such as access to the EEZ of the receiving contracting party for the harvest of a designated amount of swordfish), potential ecological impacts, and the contracting party's ICCAT compliance status. If NMFS would wish to take this kind of future action, it would transfer U.S. quota to another ICCAT contracting party via a separate rulemaking.

Alternative 2c would introduce the transfer provision outlined in ICCAT recommendation 06–02 and establish procedures for handling transfer requests or offers by ICCAT CPCs. Alternative 2c differs from alternative 2b in that alternative 2c would not place 15 percent of the North Atlantic baseline quota directly into the reserve and any quota transfers pursuant to recommendation 06–02 would come straight from the directed quota. If the United States were to receive a request for a quota transfer arrangement with another ICCAT contracting party, it would follow the same procedures as under alternative 2b.

Alternative 2a, the status quo alternative, is not preferred because failing to replenish the reserve would lead to eventual depletion by the annual 18.8 mt dw transfer to Canada. Alternative 2c is not preferred, because transferring the ICCAT-allotted 15 percent (440.6 mt dw) from the directed swordfish quota may not allow the fishery to adequately prepare for the upcoming year, since the directed quota would suddenly decrease during a season in which a transfer might be made. The industry might prepare and purchase such things as equipment for an upcoming season and lose revenue due to this quota reduction. Alternative 2b is preferred because placing 15 percent of the North Atlantic baseline quota directly into the reserve would replenish the reserve and also create a reliable directed fishery quota at the start of a given fishing season.

Public Hearings; Request for Comments

Comments on this proposed rule may be submitted at public hearings, via e-mail, mail, or fax by July 18, 2007. NMFS will hold three public hearings to receive comments from fishery participants and other members of the public regarding this proposed rule. These hearings will be physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Heather Ann Halter at (301) 713–2347 at least 5 days prior to the hearing date.

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each meeting, a representative of NMFS will explain the ground rules (*e.g.*, alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they register to speak; the attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending member of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the meeting. For individuals unable to attend a hearing, NMFS also solicits written comments on this proposed rule (see **DATES** and **ADDRESSES**).

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries, NOAA, has preliminarily determined that the regulations contained in this rule are necessary to ensure continued progress toward the conservation goals of ICCAT, the Magnuson-Stevens Act, ATCA, and the Consolidated HMS FMP.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

In compliance with section 603 of the Regulatory Flexibility Act, an Initial Regulatory Flexibility Analysis (IRFA) was prepared for this rule. The IRFA analyzes the anticipated economic impacts of the preferred actions and any significant alternatives to the proposed rule that could minimize economic impacts on small entities. A summary of the IRFA is below. The full IRFA is available from NMFS (see **ADDRESSES**).

In compliance with section 603(b)(1) of the Regulatory Flexibility Act, the purpose of this proposed rulemaking is, consistent with the Magnuson-Stevens Act, to comply with ICCAT recommendations in establishing U.S. quotas, capping the amount of carryover from 2006 for both North and South Atlantic swordfish, and establishing a mechanism for transferring up to 15 percent of the U.S. swordfish allocation to other ICCAT CPCs.

In compliance with section 603(b)(2) of the Regulatory Flexibility Act, the objective of the proposed rulemaking is to ensure that 2006 and 2007 quotas are adjusted and consistent with ICCAT recommendations, underharvest carryover is capped, and a mechanism is in place for potential quota transfers.

Section 603(b)(3) requires Agencies to provide an estimate of the number of small entities to which the rule would apply. This rule could directly affect commercial and recreational swordfish fishermen in the Atlantic Ocean in the United States. The commercial swordfish fishery is composed of fishermen who hold a swordfish directed, incidental, or handgear permit, all of which NMFS considers to be small entities. There are also related industries including processors, bait houses, and equipment suppliers. As of February 2006, there were 365 commercial swordfish permit holders for directed, incidental, and handgear permits. Also as of February 2006, there were 25,238 HMS angling permit holders who could land swordfish recreationally (*i.e.*, not for profit), and 4,173 charter/headboat permit holders authorized to land swordfish.

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements (5 U.S.C. 603(b)(4)). Similarly, this proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)).

One of the requirements of an IRFA, under section 603 of the Regulatory Flexibility Act, is to describe any alternatives to the proposed rule that accomplish the stated objectives and that minimize any significant economic impacts (5 U.S.C. 603(c)). Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)–(4)) lists four categories of alternatives that must be considered. These categories are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule

for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage for small entities.

In order to meet the objectives of this proposed rule, consistent with the Magunson-Stevens Act and ATCA, NMFS cannot exempt small entities or change the reporting requirements only for small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. In addition, none of the alternatives considered would result in additional reporting or compliance requirements (category two above). NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act and ATCA. As described below, NMFS analyzed five different alternatives in this proposed rulemaking and provides justification for selection of the preferred alternative to achieve the desired objective.

The alternatives include: Maintaining current baseline quotas for North and South Atlantic swordfish (alternative 1a, no action), implementing North and South Atlantic swordfish quotas and underharvest provisions as outlined in ICCAT recommendations 06–02 and 06–03 (alternative 1b), allocating no additional swordfish quota to the reserve category (alternative 2a, no action), transferring 15 percent (440.6 mt dw) of the 2007 baseline North Atlantic swordfish allocation to the reserve category (alternative 2b), and establishing procedures for possible implementation of the transfer provision outlined in ICCAT recommendation 06–02 (alternative 2c). Implementing North and South Atlantic swordfish quotas and underharvest provisions as outlined in ICCAT recommendations 06–02 and 06–03 (alternative 1b) and transferring 15 percent (440.6 mt dw) of the 2007 baseline North Atlantic swordfish allocation to the reserve category (alternative 2b) are the preferred alternatives.

Alternatives Considered for Quotas and Underharvest Carryovers

Alternative 1a is considered the no action alternative since it would maintain existing baseline quotas for North and South Atlantic swordfish, as well as carryover entire underharvests in future fishing years (*e.g.*, 2007 and beyond). This alternative is not preferred because it would fail to comply with international obligations under ICCAT and ATCA.

Maintaining existing baseline quotas would fail to decrease the South Atlantic recommended baseline quota from 90.2 mt dw to 75.2 mt dw. Furthermore, failing to cap overharvests consistent with ICCAT recommendations 06–02 and 06–03 would result in carryover that would more than double what is internationally recommended.

Alternative 1b, the preferred alternative, which would implement North and South Atlantic swordfish quotas and underharvest provisions as outlined in ICCAT recommendations 06–02 and 06–03, would comply with international obligations. North Atlantic underharvest carryovers would be capped at 50 percent of the 2007 and 2008 baseline quota allocations (1,468.8 mt dw). Additionally, South Atlantic underharvest carryovers would be capped at 100 mt ww (75.2 mt dw). In addition, alternative 2b would allow for 2,022.56 mt dw of the U.S. 2005 North Atlantic underharvest to be redistributed among other CPCs in 2007 (1,011.28 mt dw) and 2008 (1,011.28 mt dw), consistent with ICCAT recommendation 06–02.

By applying caps and baseline quotas in ICCAT recommendations 06–02 and 06–03 for 2007, prices for fully realized quota harvests can be calculated in order to compare the application of alternative 1a versus 1b. Application of alternative 1b versus 1a may result in a difference of $45.3 million for the North Atlantic swordfish fishery in 2007 if harvests are fully realized. Application of alternative 1b versus 1a may result in a difference of $0.14 million for the South Atlantic swordfish fishery in 2007 if harvests are fully realized. However, baseline quotas for the North and South Atlantic have not been fully realized in recent years. The pelagic longline fleet has not caught the entire U.S. swordfish quota, causing significant amounts to be carried over in past fishing years. For example, the amount of total underharvest in the North Atlantic during years 2004–2006 was 3,528.8 mt dw, 4,806.1 mt dw, and 6,905.9 mt dw, respectively. In recent years, there have been no landings of swordfish in the South Atlantic. A reduction in the growth of underharvest carryovers, and the June 7, 2007 final rule (72 FR 31688) to help revitalize the swordfish industry, would increase the ability of the vessel owners and permit holders in the pelagic longline fleet to catch their full quota. In conclusion, maintaining the North Atlantic baseline quota, decreasing the South Atlantic baseline quota, and capping underharvest carryovers in both swordfish fisheries would not have adverse impacts on a large number of small entities.

Alternatives Considered for Quota Transfers

Alternative 2a is considered the no action alternative since it would maintain the reserve category whereby no new quota allocations would replenish the reserve. This alternative is not preferred because the 18.8 mt dw per year transfer to Canada would eventually deplete the reserve. Consistent with § 635.27(c)(1)(i)(D), the reserve has four stated uses. Quota in the reserve category may be used for inseason adjustments to other fishing categories, to compensate for projected or actual overharvest in any category, for fishery independent research, or for other purposes consistent with management objectives. The status quo alternative, in and of itself, does not create any new economic burdens on the North Atlantic commercial swordfish fishery, however, if the reserve were to be completely depleted in future fishing years, its four stated uses could not be implemented to economically aid the fishery. For example, other swordfish quota categories could not be supplemented through transfers from the reserve, overharvests could not be covered, and valuable data could not be obtained by using quota for fishery independent research.

Alternative 2b would transfer 15 percent (440.6 mt dw) of the 2007 baseline U.S. North Atlantic swordfish allocation to the reserve category. This would replenish the reserve and make it available for its four stated uses.

Alternative 2c would establish procedures for possible implementation of the transfer provision outlined in the 2006 ICCAT recommendation 06–02 to handle transfer requests or offers by other CPCs. This alternative differs from alternative 2b in that 2c would not place 15 percent of the North Atlantic baseline quota directly into the reserve. Rather, if the situation arose for a needed transfer, a transfer of up to 15 percent would be made from the directed quota category. Alternative 2b is preferred over 2c because placing 15 percent of the North Atlantic baseline quota directly into the reserve would replenish the reserve and also create a reliable directed fishery quota at the start of a given fishing season. If 2c were implemented, a 15 percent transfer (if it were made) out of the directed quota may not allow the fishery to adequately prepare for the upcoming year, since the directed quota would suddenly decrease during a season in which a transfer might be made. The industry might prepare and purchase such things as equipment for an upcoming season and

lose revenue due to this quota reduction.

Alternative 2b would replenish a reserve that would otherwise become depleted in future fishing years through the annual 18.8 mt dw transfer to Canada. This creates four options (previously mentioned) for use of the 15 percent (440.6 mt dw) allocated reserve quota. Placing 15 percent of the 2007 and 2008 baseline quota directly into the reserve would provide for a directed fishery quota that would not be reduced due to an in-season transfer, as well as provide opportunity to cover other U.S. North Atlantic swordfish quota categories should the situation arise. Implementing alternatives 1b and 2b, transferring 15 percent of the U.S. baseline quota to the reserve, amounts to 3,601.9 mt dw for the North Atlantic directed swordfish fishery and 504.5 mt dw for the reserve during the 2007 fishing year. If alternative 2b is not implemented, the North Atlantic directed swordfish fishery would have a larger quota of 4,042.5 mt dw and a smaller reserve of 63.9 mt dw. The implementation of alternative 2b would therefore result in a potential loss in revenue of $3.7 million to the North Atlantic directed swordfish fishery when compared to the status quo. However, NMFS does not expect fishing effort to increase in the short term to the extent that this loss would be realized. U.S. fishermen have not caught their full swordfish quota since 2000, resulting in large underharvest carryovers which, in turn, made for large adjusted quotas. Therefore NMFS believes that the caps, and the June 7, 2007 final rule (72 FR 31688) to revitalize the swordfish industry, would help the fishery harvest the proposed swordfish quota without the large carryovers which have occurred in the past. Furthermore, as previously stated, one of the four possible uses of the reserve would be to transfer quota back to the directed swordfish category if needed, which may also prevent this potential economic loss from being realized. Therefore, alternative 2b is preferred over 2c because it minimizes any economic impact and complies with international obligations.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Management, Reporting and recordkeeping requirements, Treaties.

Dated: June 11, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.5, paragraph (c)(2) is revised to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(c) * * *

(2) The owner, or the owner's designee, of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report all non-tournament landings of Atlantic blue marlin, Atlantic white marlin, and Atlantic sailfish, and all non-tournament and non-commercial landings of North Atlantic swordfish to NMFS by telephone to a number designated by NMFS, or electronically via the internet to an internet Web site designated by NMFS, or by other means as specified by NMFS, within 24 hours of that landing. For telephone landing reports, the owner, or the owner's designee, must provide a contact phone number so that a NMFS designee can call the vessel owner, or the owner's designee, for follow up questions and to confirm the reported landing.

Regardless of how submitted, landing reports submitted to NMFS are not complete unless the vessel owner, or the owner's designee, has received a confirmation number from NMFS or a NMFS designee.

* * * * *

3. In § 635.27, paragraphs (c)(1)(i)(A) and (D), (c)(1)(ii), and (c)(3)(i) and (ii) are revised to read as follows:

§ 635.27 Quotas.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) A swordfish from the North Atlantic stock caught prior to the directed fishery closure by a vessel for which a directed fishery permit, or a handgear permit for swordfish, has been issued is counted against the directed fishery quota. The annual fishery quota, not adjusted for over- or underharvests, is 2,937.6 mt dw for each fishing year. The 2007 annual quota of 2,937.6 mt dw will be allocated to an abbreviated fishing year, which will start June 1, 2007, and extend through December 31, 2007. After December 31, 2007, the annual quota is subdivided into two equal semi-annual quotas of 1,468.8 mt dw: One for January 1 through June 30, and the other for July 1 through December 31.

* * * * *

(D) A portion of the total allowable catch of North Atlantic swordfish may be held in reserve for inseason adjustments to fishing categories, to compensate for projected or actual overharvest in any category, for fishery independent research, for transfer to another ICCAT contracting party, or for other purposes consistent with management objectives.

* * * * *

(ii) South Atlantic Swordfish. The annual directed fishery quota for the South Atlantic swordfish stock is 75.2 mt dw. The 2007 annual quota of 75.2 mt dw will be allocated to an abbreviated fishing year, which will start June 1, 2007, and extend through December 31, 2007. After December 31, 2007, the annual quota is subdivided into two equal semi-annual quotas of 37.6 mt dw: One for January 1 through June 30, and the other for July 1 through December 31. The entire quota for the South Atlantic swordfish stock is reserved for vessels with pelagic longline gear onboard and that have been issued a directed fishery permit for swordfish. No person may retain swordfish caught incidental to other fishing activities or with other fishing gear in the Atlantic Ocean south of 5 degrees North latitude.

* * * * *

(3) * * *

(i) Except for the carryover provisions of paragraphs (c)(3)(ii) and (iii) of this section, NMFS will file with the Office of the Federal Register for publication notification of any adjustment to the annual quota necessary to meet the objectives of the Consolidated Highly Migratory Species Fishery Management Plan.

(ii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota will be subtracted from, or added to, the following year's quota for that area. As necessary to meet management objectives, such carryover adjustments may be apportioned to fishing categories and/or to the reserve. Carryover adjustments for the North Atlantic shall be limited to 50 percent of the baseline quota allocation for that

year. Carryover adjustments for the South Atlantic shall be limited to 100 mt ww (75.2 mt dw) for that year. Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual fishing seasons. NMFS will file with the Office of the Federal Register for publication any adjustment or apportionment made under this paragraph.

* * * * *

4. In § 635.28, paragraph (c)(2) is revised to read as follows:

§ 635.28 Closures.

* * * * *

(c) * * *

(2) *Incidental catch closure.* When the annual incidental catch quota specified in § 635.27(c)(1)(i) is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication notification of closure. From the effective date and time of such notification until additional incidental catch quota becomes available, no swordfish may be landed in an Atlantic coastal state, or be possessed or sold in or from the Atlantic Ocean north of 5° N. lat. unless the directed fishery is open and the appropriate permits have been issued to the vessel. In the event of a directed and incidental North Atlantic swordfish category closure, South Atlantic swordfish may be possessed in the Atlantic Ocean north of 5° N. lat. and/or landed in an Atlantic coastal state on a vessel with longline gear onboard, provided that the harvesting vessel does not fish on that trip in the Atlantic Ocean north of 5° N. lat., the fish were taken legally from waters of the Atlantic Ocean south of 5° N. lat., and the harvesting vessel reports positions with a vessel monitoring system as specified in § 635.69.

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[FR Doc. E7–11623 Filed 6–15–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 070226045 7045 01; I.D. 020107A]

RIN 0648–AT55

Fisheries in the Western Pacific; Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region; Management Measures for Bigeye Tuna Pacific-wide and Yellowfin Tuna in the Western and Central Pacific Ocean

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

ACTION: Proposed rule; withdrawn; partial approval of fishery management plan amendment.

SUMMARY: NMFS partially approved Amendment 14 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Amendment 14), prepared by the Western Pacific Fishery Management Council (Council). The Council's recommendation for international management action to end overfishing of bigeye and yellowfin tuna stocks was approved. The remaining portions of the amendment relating to internal protocols for managing Pacific pelagic species in international waters, and new Federal permitting and data reporting requirements for the domestic Hawaii-based pelagic (non-longline) fisheries, were not approved.

DATES: The Council was notified that the amendment was partially approved on May 16, 2007.

ADDRESSES: Copies of the Pelagics FMP and Amendment 14 may be obtained from Kitty M. Simonds, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Bob Harman, NMFS, (808) 944–2271.

SUPPLEMENTARY INFORMATION: On December 15, 2004, NMFS notified the Western Pacific and Pacific Fishery Management Councils that overfishing was occurring on bigeye tuna Pacific-wide (69 FR 78397, December 30, 2004). On March 16, 2006, NMFS notified the Western Pacific Council (Council) that overfishing was occurring on western and central Pacific (WCPO) yellowfin tuna (71 FR 14837, March 24, 2006).

In response to these determinations, the Council prepared and transmitted to NMFS for review by the Secretary of Commerce (Secretary), Amendment 14 to the Pelagics FMP. Amendment 14, ''Management Measures for Pacific Bigeye Tuna and Western and Central Pacific Yellowfin Tuna,'' addressed the overfishing condition of these tunas, as was required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) at the time the Council was notified of the overfishing.

Amendment 14 contained several recommended international and domestic management measures. The recommended international measures included specific recommendations to NMFS, the Department of State, and the U.S. delegations to the Pacific tuna regional fishery management organizations, to immediately end international overfishing in the WCPO and the eastern Pacific, and to establish a mechanism by which the Council would be involved in international negotiations that involve management of fisheries under the jurisdiction of the Council and NMFS in the western Pacific.

Domestically, Amendment 14 included the establishment of control dates for most domestic pelagic fisheries, and proposed to enhance data collection for Hawaii-based small boat pelagic fisheries through mandatory Federal permits and logbooks for commercial small boat fisheries and improved surveys and voluntary reporting for recreational fisheries.

NMFS published a notice of availability for Amendment 14 on February 15, 2007 (72 FR 7385), and the comment period ended on April 16, 2007. NMFS received no comments on the amendment. On March 29, 2007, NMFS subsequently published a proposed rule for the permitting and data collection requirements for Hawaii-based, non-longline, pelagic commercial vessels (72 FR 14761), and the comment period ended on May 14, 2007. NMFS received one comment on the amendment's proposed measures. The Hawaii Department of Land and Natural Resources expressed concern that the establishment of a separate Federal permit and reporting requirement, duplicating the state's existing commercial marine license reporting system, would impose an unnecessary burden on fishermen. Instead, the state strongly favors a joint and collaborative effort with NMFS, under an existing data sharing agreement, to help improve its fisheries data collection program to better monitor Hawaii's pelagic non-longline, commercial fishery.

International Provisions

Since NMFS determined that overfishing was occurring on Pacific bigeye and WCPO yellowfin tunas, the reauthorization of the Magnuson-Stevens Act and related legislation created new requirements related to the international management of fisheries. These new requirements affect the significance of the Council's recommendations for international action to end overfishing of Pacific bigeye and WCPO yellowfin tunas, and the protocol specifying the Council's involvement in future international management efforts.

Council Recommendations for International Management Action

Section 406 of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) created a new section 304(i) in the Magnuson-Stevens Act entitled International Overfishing. Section 304(i) applies to fisheries that the Secretary determines are approaching a condition of being overfished due to excessive international fishing pressure, and for which there are no management measures to end overfishing under an international agreement to which the United States is a party. If these conditions are met, then the Council is relieved of its responsibility under section 304(e) to prepare and implement a fishery management plan, plan amendment, or proposed regulations to end overfishing immediately, or to prevent overfishing from occurring. In lieu of the requirement to implement a plan, amendment, or proposed regulations, section 304(i) requires the Council to develop and submit to the Secretary, recommendations for domestic regulations to address the relative impact of fishing vessels of the United States, and to develop and submit to the Secretary of State and to the Congress, recommendations for international actions that will end overfishing in the fishery, taking into account the relative impact of vessels of other nations and vessels of the United States. Section 304(i) does not provide that the required recommendations must be developed and submitted through a plan or plan amendment, or through any particular vehicle. However, section 304(i) does not expressly preclude a council from developing and submitting such recommendations through a plan or plan amendment.

Amendment 14 and the proposed rule recognized that Pacific bigeye tuna and WCPO yellowfin tuna are exploited by foreign fishing fleets along with the U.S. fleet, and that U.S. fisheries account for only a small percentage of the Pacific bigeye and WCPO yellowfin tuna harvests. For example, in 2004, the estimated bigeye tuna catch by U.S. commercial fisheries was 2.3 percent of the 2004 total Pacific-wide bigeye tuna catch, and the estimated yellowfin tuna catch was about 0.35 percent of the 2004 total Pacific-wide yellowfin tuna catch, and 0.58 percent of the yellowfin tuna caught in the WCPO. These figures demonstrate that the overfishing is a result of excessive international fishing pressure, and indicate that the capacity for unilateral action by the United States to prevent or end overfishing is limited.

There are existing management measures to address fishing mortality under international agreements to which the United States is a party; however, none of the measures are adequate to end overfishing of the subject stocks. In response to concerns about the condition of the bigeye tuna stock in the Eastern Pacific Ocean, the Inter-American Tropical Tuna Commission (IATTC) adopted management measures, commencing with temporal closures of purse-seine fishing and bigeye tuna catch limits for longline vessels. Within the area of competence of the IATTC, the longline fleets of China, Japan, Korea, and Chinese Taipei were allocated specific catch limits. Other member nations of the IATTC were allocated bigeye tuna catch limits equivalent to their respective 2001 catches. The United States, a member nation of the IATTC, received a fleet-wide longline bigeye tuna limit of 150 mt, and this quota was increased to 500 mt for 2007. These measures are insufficient to achieve the reductions recommended by IATTC staff to end the overfishing.

The United States is also a Cooperating Non-member of the Commission on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). The WCPFC, established under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), adopted conservation and management measures for WCPO yellowfin tuna and WCPO bigeye tuna in 2005 and 2006. The measures include national limits on bigeye tuna catches by longline fisheries in the Convention area (which overlaps with the area of competence of the IATTC), based on each member's average 2001–04 catches, or for China and the United States, based on their 2004 catches. These limits will remain in effect through 2008. Similar to the IATTC circumstances, these measures are insufficient to achieve the reductions recommended by the Scientific Committee to end overfishing.

Based on the above, and as acknowledged in the proposed rule (72 FR 14763), Pacific bigeye tuna and WCPO yellowfin tuna are experiencing overfishing due to excessive international fishing pressure. Existing management measures are not sufficient to end the overfishing under international agreements to which the United States is a party. Thus, the Council is required under section 304(i) to develop recommendations for domestic regulations to address the relative impact of fishing vessels of the United States, and to develop and submit to the Secretary of State and to the Congress, recommendations for international actions that will end overfishing in the fishery, taking into account the relative impact of vessels of other nations and vessels of the United States.

The measures proposed in Amendment 14 satisfy the Council's obligations under section 304(i) to submit recommendations for international action. As noted above, there is no reason a council may not develop and submit such recommendations through a plan and plan amendment. Thus, these recommendations contained in Amendment 14 were approved and will be forwarded to the Secretary of State and Congress for appropriate consideration, and the Council need not submit additional measures in order to comply with existing legal mandates.

Council Protocol for International Participation

Amendment 14 contained a recommendation for establishing a protocol related to the Council's role in the management of pelagic fish stocks that are managed internationally. The protocol included steps the Council would take to monitor the status of internationally managed fish stocks, participate in U.S. delegations in meetings with international regional fisheries management organizations (RFMO), and make recommendations for international agreements.

Section 503(f) of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA) requires the development of a memorandum of understanding (MOU) among the Secretary of Commerce, the Secretary of State, and the three Councils in the Pacific. The MOU will clarify the roles of the respective Councils in international fishery management discussions relating to

stocks under Council jurisdictions, as well as with respect to development of domestic fishing regulations for such stocks that are consistent with international management negotiations.

The MOU is under development by the Councils and the Secretary, in consultation with the Secretary of State. It will address participation in U.S. delegations to international fishery organizations in the Pacific Ocean, including government-to-government consultations; providing formal recommendations to the Departments of Commerce and State regarding necessary measures for domestic and foreign vessels fishing for highly migratory species, coordinating positions within the U.S. delegation for presentation to the appropriate international fishery organization, and recommending those domestic fishing regulations that are consistent with the actions of the international fishery organization, for approval and implementation under the Magnuson-Stevens Act.

The Council's recommended protocol describing its role in the management of international fisheries contained in Amendment 14 was premature and did not include all the parties required pursuant to the new legislation. It would have been inconsistent with the 503(f) provisions to agree to such a protocol at this time; therefore, it was not approved. In light of the ongoing development of the MOU required under the WCPFCIA, the Council's proposed protocol is no longer necessary. However, should the Council wish to establish such a protocol in the FMP, it would have to be consistent with the controlling provisions of the MOU.

Domestic Permit and Reporting Recommendations

Amendment 14 recommended the establishment of a Federal permit and data collection program for Hawaii-based non-longline commercial pelagic fisheries. National Standard 7 of the Magnuson-Stevens Act mandates that management measures, where practicable, minimize costs and avoid unnecessary duplication. The permitting and data collection measures proposed in Amendment 14 would have been duplicative, and unnecessary in light of existing State of Hawaii permitting and catch and effort reporting programs. The state requires every commercial fisherman (operators and crew members) to have a current Commercial Marine Licenses (CML) issued annually by the Hawaii Department of Land and Natural Resources, Division of Aquatic Resources (HDAR). This requirement applies to fishermen who fish in the EEZ, as well as state waters. Each charter fishing vessel operator and crew member is also required by the State to have CMLs (charter fishing clients are not required to have a license).

State-licensed fishermen are required to report catch and effort on a monthly or trip basis to HDAR on forms provided by HDAR. (Federally-permitted commercial longline fishermen are exempt from the State reporting requirement because they report to NMFS on Federal logbooks, which are accepted by the HDAR as fulfilling the state reporting requirement.) Federal permits and logbooks would be redundant to the state's CML and logbooks. These redundant requirements would add an unnecessary burden on fishermen, and likely decrease compliance with both the State's management program and any potential Federal program. Thus, the permit and data collection measures proposed in Amendment 14 are inconsistent with National Standard 7.

A more cost-effective and non-duplicative management strategy for the small boat commercial pelagic fishery in Hawaii is to work collaboratively with the State to enhance and improve the state's fishing permit and reporting requirements, and continue the State-Federal data sharing agreement that has been in place since 1988. This approach would eliminate redundancy and the burden on fishermen of separate Federal permit and logbook requirements. Instead, NMFS would rely on the HDAR's processes and staff to continue to process the existing commercial fishing reports, and NMFS would continue to obtain necessary catch and effort data via the existing data exchange agreement.

A cooperative state-Federal system of permitting and reporting for non-longline pelagic fisheries would simplify enforcement, would provide the necessary fisheries information required for stock assessment and fishery management, and would provide a non-confusing and non-duplicative burden on the fishing public.

To this end, NMFS PIR staff has begun to work jointly with staffs of the NMFS Pacific Islands Fisheries Science Center, Council, and HDAR to enhance the State's permitting and data collection program for small-boat pelagic commercial fisheries. This effort is intended to ensure that data to manage the small-boat commercial pelagic fisheries around Hawaii are collected in a cost-effective and non-duplicative manner.

Section 304(i) and Domestic Measures

As part of the Section 304(i) obligations discussed above, the Council is required to submit recommendations to address the relative impact of fishing vessels of the United States. As stated in the proposed rule (72 FR 14761), existing measures have been implemented to address the relative impact of U.S. fishing vessels within the meaning of section 304(i). While additional measures, such as those proposed in Amendment 14 may be submitted to strengthen the domestic management program, they must be consistent with existing law to be implemented. If the Council wishes to propose additional permitting and data collection requirements, it must be done in a manner consistent with the considerations discussed above.

As a result of not approving the underlying provisions in Amendment 14, NMFS will not publish a final rule to implement Federal permits and reporting requirements for the Hawaii-based non-longline commercial pelagic fishery. NMFS hereby withdraws the proposed rule (72 FR 14761, March 29, 2007).

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

Dated: June 11, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E7–11631 Filed 6–15–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 72, No. 116

Monday, June 18, 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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Illinois 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 of the Illinois Advisory Committee to the Commission will convene by conference call at 1 p.m. and adjourn at 2 p.m. CST on June 22, 2007. The purpose of the meeting is to approve two project proposals: (1) Enforcing Prohibitions of Religious Discrimination in Illinois Prisons, and (2) Racial and Ethnic Disparities of Health in Chicago.

This meeting is available to the public through the following toll-free call-in number: 800–516–9896, access code 9594. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Carolyn Allen of the Midwestern Regional office at (312) 353–8311, by 12 p.m. on June 21, 2007.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by June 18, 2007. The address is 55 W. Monroe St., Suite 410, Chicago, IL 60603. Comments may be emailed to Carolyn Allen at *callen@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Midwestern 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, *www.usccr.gov*, or to contact the Midwestern Regional Office at the above email 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, June 12, 2007.

Ivy Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E7–11639 Filed 6–15–07; 8:45 am]

BILLING CODE 6335–02–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; George Charles Budenz II and Richard Scott Tobey; In the Matter of: George Charles Budenz II, 94394–198, FDC SEATAC, Federal Detention Center, P.O. Box 13900, Seattle, WA 98198 and With an Address at: 25143 Jack Rabbit Acres, Escondido, CA 92026, Respondent: and Richard Scott Tobey, 42079 Humber Drive, Temecula, CA 92591, Related Person

Order Denying Export Privileges

A. Denial of Export Privileges of George Charles Budenz II

On July 19, 2006, in the U.S. District Court in the Southern District of California, following a plea of guilty, George Charles Budenz II (''Budenz'' or ''Respondent'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2000)) (''AECA''). Budenz pled guilty to knowingly and willfully exporting and causing to be exported from the United States to Malaysia and Belgium military aircraft parts which were designated as defense articles on the United States Munitions List, without having first obtained a license from the Department of State for such export, or other written authorization for such an export. Budenz was sentenced to 36 months imprisonment and fined $10,000, followed by three years of supervised release.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. 2401–2420 (2000)) (the ''Act'') [1] and § 766.25 of the Export Administration Regulations (''Regulations'') [2] provide, in pertinent part, that ''[t]he Director of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny export privileges of any person who has been convicted of a violation of * * * Section 38 of the Arms Export Control Act,'' for a period not to exceed 10 years from the date of conviction. 15 CFR 766.25(a) and (d). In addition § 750.8 of the Regulations states that BIS's Office of Exporter Services may revoke any BIS licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Budenz's conviction for violating the AECA, and have provided notice and an opportunity for Budenz to make a written submission to the Bureau of Industry and Security as provided in § 766.25 of the Regulations. Having received no submission from Budenz, I, following consultations with the Office of Export Enforcement, including its Director, have decided to deny Budenz's export privileges under the Regulations for a period of five years from the date of Budenz's conviction.

B. Denial of Export Privileges of Related Persons

In addition, pursuant to §§ 766.25(h) and 766.23 of the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, may take action to name persons related to the Respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business in order to prevent evasion of the Order. I gave notice to Richard Scott Tobey (''Tobey''), notifying him that his export privileges under the Regulations could be denied for up to 10 years as BIS believes that he is related to Arif Ali

[1] 50 U.S.C. app. § 2401–2420. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 3, 2006 (71 FR 44551, Aug. 7, 2006), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA'').

[2] The Regulations are currently codified at 15 CFR parts 730–774 (2007).

Durrani (''Durrani'') and Budenz and including him in an Order is necessary to prevent evasion. I have decided to include Tobey in the Budenz Order. The basis for naming Tobey to the Budenz Order is that Tobey pled guilty to conspiracy to violate the AECA, in violation of 18 U.S.C. 371, for conspiring to export controlled military aircraft parts to the United Arab Emirates and Canada without the required licenses from the Department of State. Tobey was placed on probation for five years and fined $10,000.00. Based upon these facts, Tobey is related to Budenz by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business and he needs to be named to any Budenz Denial Order to prevent evasion of it.

Having received no submission from Tobey, I have decided, following consultations with the Office of Export Enforcement, including its Director, to name Tobey as a related person to the Budenz Denial Order, thereby denying his export privileges for five years from the date of Budenz's conviction.

I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Budenz and Tobey had an interest at the time of Budenz's conviction. The five-year denial period ends on July 19, 2011.

Accordingly, *it is hereby Ordered*

I. Until July 19, 2011, George Charles Budenz II, 94394–198, FDC SEATAC, Federal Detention Center, P.O. Box 13900, Seattle, WA 98198, and with an address at: 25143 Jack Rabbit Acres, Escondido, CA 92026, and when acting for or on his behalf, his employees, agents or representatives, (''the Denied Person'') and the following person related to the Denied Person as defined by Section 766.23 of the Regulations, Richard Scott Tobey, 42079 Humber Drive, Temecula, CA 92591, and when acting for or on his behalf, his employees, agents or representatives, (''the Related Person'') (together, the Denied Person and the Related Person are ''Persons Subject To This Order'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Persons Subject To This Order any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Persons Subject To This Order of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Persons Subject To This Order acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Persons Subject To This Order of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Persons Subject To This Order in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Persons Subject To This Order, or service any item, of whatever origin, that is owned, possessed or controlled by the Persons Subject To This Order if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. In addition to the Related Person named above, after notice and opportunity for comment as provided in section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Budenz by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until July 19, 2011.

VI. In accordance with Part 756 of the Regulations, Budenz may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. In accordance with Part 756 of the Regulations, Tobey may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VIII. A copy of this Order shall be delivered to Budenz and the Related Person. This Order shall be published in the **Federal Register**.

Dated: June 9, 2007.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 07–2982 Filed 6–15–07; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Arif Ali Durrani; In the Matter of: Arif Ali Durrani, Registration #09027–014, Victorville Medium I, Federal Correctional Institute, P.O. Box 5300, Adelanto, CA 92301

Order Denying Export Privileges

A. Denial of Export Privileges of Arif Ali Durrani

On June 5, 2005, in the U.S. District Court in the Southern District of California, Arif Ali Durrani (''Durrani'') was found guilty of four counts of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2000)) (''AECA''). Specifically, the Court found that Durrani knowingly and willfully exported from the United States to Malaysia and Belgium controlled military aircraft parts which were designated as defense articles on the United States Munitions List, without having first obtained a license from the Department of State for such export, or

written authorization for such an export. In addition, Durrani was also found guilty on one count of conspiracy. Durrani was sentenced to 150 months imprisonment followed by three years of supervised released.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. 2401–2420 (2000)) (''Act'') [1] and § 766.25 of the Export Administration Regulations [2] (''Regulations'') provide, in pertinent part, that ''[t]he Director of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny export privileges of any person who has been convicted of a violation of * * * Section 38 of the Arms Export Control Act,'' for a period not to exceed 10 years from the date of conviction. 15 CFR 766.25(a) and (d). In addition, § 750.8 of the Regulations states that BIS's Office of Exporter Services may revoke any BIS licenses previously issued in which the person had an interest at the time of his conviction.

I have received notice of Durrani's conviction for violating the AECA, and have provided notice and an opportunity for Durrani to make a written submission to the Bureau of Industry and Security as provided in § 766.25 of the Regulations. Having received no submission from Durrani, I, following consultations with the Office of Export Enforcement, including its Director, have decided to deny Durrani's export privileges under the Regulations for a period of ten years from the date of Durrani's conviction.

Accordingly, *it is hereby Ordered:*

I. Until June 5, 2015, Arif Ali Durrani, Registration #09027–014, Victorville Medium I, Federal Correctional Institute, P.O. Box 5300, Adelanto, CA 92301, and when acting for or on behalf of Durrani, his representatives, assigns, agents, or employees, (collectively referred to hereinafter as the ''Denied Person'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in section 766.203 of the Regulations, any other person, firm, corporation, or business organization related to ARIF Ali Durrani by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions or this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until June 5, 2015.

VI. In accordance with Part 756 of the Regulations, Durrani may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Durrani. This Order shall be published in the **Federal Register.**

Dated: June 9, 2007.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 07–2981 Filed 6–15–07; 8:45 am]

BILLING CODE 3510–DT–M

[1] Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 3, 2006 (71 FR 44551, August 7, 2006), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA'').

[2] The Regulations are currently codified at 15 CFR parts 730–774 (2007).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') has determined that Hilltop International (''Hilltop'') is the successor–in-interest to Yelin Enterprise Co. Hong Kong (''Yelin''). As a result, Hilltop should receive the same antidumping duty treatment with respect to certain frozen warmwater shrimp from the People's Republic of China (''PRC'') as Yelin, as of the date of publication of this notice in the **Federal Register**.

EFFECTIVE DATE: June 18, 2007.

FOR FURTHER INFORMATION CONTACT: Erin Begnal or Scot Fullerton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–1442 or 202–482–1386, respectively.

SUPPLEMENTARY INFORMATION:

Background

The antidumping duty order for certain frozen warmwater shrimp from the PRC was published on February 1, 2005. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China*, 70 FR 5149 (February 1, 2005) (''*PRC Shrimp Order*''). As part of the antidumping duty order on certain frozen warmwater shrimp from the PRC, Yelin received a separate rate of 82.27 percent. *Id.* at 70 FR at 5151. Moreover, as part of the preliminary results of the first administrative review, Yelin preliminarily received a separate rate of 0.00 percent. *See Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2006 Administrative Review and Preliminary Intent To Rescind 2004/2006 New Shipper Review*, 72 FR 10645 (March 9, 2007).

On March 16, 2007, Yelin filed a submission requesting that the Department conduct a changed circumstances review of the antidumping duty order on certain frozen warmwater shrimp from the PRC to confirm that Hilltop is the successor–in-interest to Yelin.[1] In its submission, Yelin provided information on the events leading to the transition from Yelin to Hilltop. Yelin also provided documentation relating to the change in name to Hilltop and documentation relating to the share transfer from Yelin, to its partners, to Hilltop, to carry on the business of Yelin. In addition, Yelin provided documentation relating to the ownership structure and management, organizational structure, customer base, accounting processes, supplier relationships, products, and pricing. As part of its March 16, 2007, submission, Yelin also requested that the Department conduct an expedited changed circumstances review.

On May 2, 2007, the Department published the initiation and preliminary results of this changed circumstances review and preliminarily determined that Hilltop is the successor–in-interest to Yelin. *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Initiation and Preliminary Results of Changed Circumstances Review*, 72 FR 24273 (May 2, 2007) (''*Preliminary Results*''). As a result, the Department preliminarily determined that Hilltop should receive the same antidumping duty treatment with respect to certain frozen warmwater shrimp from the PRC as Yelin. In the *Preliminary Results*, we stated that interested parties could request a hearing or submit case briefs and/or written comments to the Department no later than 30 days after publication of the *Preliminary Results* notice in the **Federal Register**, and submit rebuttal briefs, limited to the issues raised in the case briefs, five days subsequent to the due date of the case briefs. *See Preliminary Results*, 72 FR at 24275. However, we did not receive any hearing requests or comments on the *Preliminary Results*.

Scope of Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild–caught (ocean harvested) or farm–raised (produced by aquaculture), head–on or head–off, shell–on or peeled, tail–on or tail–off,[2] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTS''), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild–caught warmwater species include, but are not limited to, white–leg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (Macrobrachium rosenbergii), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this investigation. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this investigation.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell–on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) Lee Kum Kee's shrimp sauce; (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); (8) certain dusted shrimp; and (9) certain battered shrimp. Dusted shrimp is a shrimp–based product: (1) That is produced from fresh (or thawed–from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non–shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (''IQF'') freezing immediately after application of the dusting layer. Battered shrimp is a shrimp–based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par–fried.

The products covered by this investigation are currently classified under the following HTS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this investigation is dispositive.

Final Results of Changed Circumstances Review

Based on the information provided by Hilltop/Yelin, and the fact that the Department did not receive any comments during the comment period following the preliminary results of this changed circumstances review, the

[1] See Letter from Yelin, to the Department, regarding *Request for Expedited Changed Circumstances Determination, Certain Frozen and Canned Warmwater Shrimp from China* (Case No. A-570-848) (March 16, 2007) (''Yelin's CCR Request'').

[2] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

Department hereby determines that Hilltop is the successor–in-interest to Yelin for antidumping duty cash deposit purposes.

Instructions to U.S. Customs and Border Protection

The Department will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all shipments of the subject merchandise produced and exported by Hilltop entered, or withdrawn from warehouse, for consumption, on or after the publication date of this notice and apply a cash deposit rate of 82.27 percent (*i.e.*, Yelin's cash deposit rate). *See PRC Shrimp Order* at 70 FR at 5151. This deposit rate shall remain in effect until publication of the final results of the ongoing 2004/2006 administrative review, in which Yelin is a participant.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.306 of the Department's regulations. 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 sanctionable violation.

This notice is in accordance with sections 751(b) and 777(i)(1) of the Tariff Act of 1930, as amended, and section 351.216(e) of the Department's regulations.

Dated: June 11, 2007.

Joseph A. Spetrini,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–11709 Filed 6–15–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Review Panel

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have two main purposes. Panel members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described below:

DATES: The announced meeting is scheduled for: Tuesday, June 26, 2007.

ADDRESSES: Conference Call. Public access is denied however the call will occur at SSMC Bldg 3, Room #11716, 1315 East-West Highway, Silver Spring, MD.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brown, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11717, Silver Spring, Maryland 20910, (301)734–1088.

SUPPLEMENTARY INFORMATION: The Panel, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128). The Panel advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice. The agenda for the meeting is as follows:

Tuesday, June 26, 2007—2 to 3:30 p.m.

Agenda

I. New Jersey Sea Grant Special Review Team Update

II. Review Logistics for Annual Fall Meeting

This meeting is closed to the public based upon Sunshine Act, 5 U.S.C. 552b(c)(6).

Dated: June 13, 2007.

Terry Bevels,

Deputy Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E7–11696 Filed 6–15–07; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket Number: 070327071–7070–01]

Draft Revision of the NOAA Five-Year Research Plan

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of availability and request for public comment.

SUMMARY: NOAA publishes this notice to announce the availability of the revised draft NOAA 5-Year Research Plan for public comment. The Research Plan is revised to update it for 2007–2011.

DATES: Comments on this draft document must be submitted by 5 p.m. EDT on July 18, 2007.

ADDRESSES: The draft NOAA 5-Year Research Plan will be available on the NOAA Research Council Web site at *http://www.nrc.noaa.gov/plans.html.*

The public is encouraged to submit comments electronically to *noaa.review.5year@noaa.gov.* For individuals who do not have access to a computer, comments may be submitted in writing to: NOAA Research Council, c/o Mr. Derek Parks, Silver Spring Metro Center Bldg. 3, Room 11335, R/PPE, 1315 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Mr. Derek Parks, Silver Spring Metro Center Bldg. 3, Room 11335, R/PPE, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1186, Fax: 301–713–0158, e-mail: *Derek.Parks@noaa.gov*), during normal business hours of 9 a.m. to 5 p.m. Eastern Time, Monday through Friday, or visit the NOAA Research Council Web site at: *http://www.nrc.noaa.gov.*

SUPPLEMENTARY INFORMATION: NOAA is publishing this notice to announce the availability of the draft NOAA 5-Year Research Plan Draft for public comment. The NOAA Research Council is seeking public comment from all interested parties. The NOAA 5-Year Research Plan Draft is being issued for comment only and is not intended for interim use. Suggested changes will be incorporated where appropriate, and the final document will be posted on the NOAA Research Council Web site.

The NOAA 5-Year Research Plan is being revised by the NOAA Research Council to update the original NOAA 5-Year Research Plan, published in January 2005. The revisions reflect the evolution of NOAA's research activities and priorities since the document's original publication. The draft NOAA 5-Year Research Plan is consistent with the NOAA Strategic Plan and the NOAA 20-Year Research Vision.

The draft NOAA 5-Year Research Plan frames research in NOAA within the context of societal needs and by establishing overarching research questions encompassing critical environmental challenges facing the United States today and in the future. This plan explicitly states priority research areas for the short term and the milestones by which NOAA intends to measure progress within these areas. Significant changes in this revision of

the NOAA 5-Year Research Plan include expanded discussion of critical research tools as well as the transition of research to application, a recognition of the value of transformational research, and a new chapter on technology and mission support. The draft NOAA 5-Year Research Plan also provides clear linkages between its research milestones and the NOAA Strategic Plan.

NOAA welcomes all comments on the content of the draft NOAA 5-Year Research Plan. We also request comments on any inconsistencies perceived within the document and possible omissions of important topics or issues. For any shortcoming noted within the draft document, please propose specific remedies.

Please follow these instructions for preparing and submitting comments. Using the format guidance described below will facilitate the processing of reviewer comments and assure that all comments are appropriately considered. Overview comments should be provided first. Comments that are specific to particular pages, paragraphs, or lines of the section should follow any overview comments and should identify the page numbers to which they apply. Please number each page of your comments.

Dated: June 13, 2007.

Terry Bevels,

Deputy Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E7–11701 Filed 6–15–07; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 07–26]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 07–26 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: June 11, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

JUN 08 2007

In reply refer to:
I-07/005215

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-26, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Japan for defense articles and services estimated to cost $475 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

JEFFREY B. KOHLER
LIEUTENANT GENERAL, USAF
DIRECTOR

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Transmittal No. 07-26

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Japan

(ii) **Total Estimated Value:**

Major Defense Equipment*	$384 million
Other	$ 91 million
TOTAL	$475 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** nine SM-3 Block IA STANDARD missiles with MK 21 Mod 2 canisters, Ballistic Missile Defense (BMD) upgrades to one AEGIS Weapon System, AEGIS BMD Vertical Launch System ORDALTs, containers; spare and repair parts; supply support; U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) **Military Department:** Navy (LWA)

(v) **Prior Related Cases, if any:**
FMS case LUH - $309M – 27Jul04
FMS case LUX - $440M – 27Sep05
FMS case LVK - $440M – 27Jul06

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** JUN 0 8 2007

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Japan - SM-3 Block IA STANDARD Missiles

The Government of Japan has requested a possible sale for nine SM-3 Block IA STANDARD missiles with MK 21 Mod 2 canisters, Ballistic Missile Defense (BMD) upgrades to one AEGIS Weapon System, AEGIS BMD Vertical Launch System ORDALTs, containers, spare and repair parts, publications, documentation, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $475 million.

Japan is one of the major political and economic powers in East Asia and the Western Pacific and a key ally of the United States in ensuring the peace and stability of this region. The U.S. Government shares bases and facilities in Japan. It is vital to the U.S. national interest to assist Japan to develop and maintain a strong and ready self-defense capability, which will contribute to an acceptable military balance in the area. This proposed sale is consistent with these U.S. objectives and with the 1960 Treaty of Mutual Cooperation and Security.

Japan's agreement to provide fuel/logistics to U.S. and allied ships supporting Operation Enduring Freedom and its deployment of an AEGIS destroyer to the Indian Ocean have focused new obligations on the Japan Self Defense Forces (JSDF). The Japan Maritime Self Defense Forces (JMSDF) has four AEGIS destroyers operating with SM-2 missiles at sea; the fifth commissioned 15 March 2007, and a sixth is under construction. Although comparable weapons are not currently deployed in Northeast Asia, the proposed sale of SM-3 missiles and BMD upgrades to the AEGIS Weapon System will not significantly alter the existing military balance in the region as the proposed sale enhances only defensive capabilities. The JMSDF is fully capable of integrating the modified AEGIS Weapon System and SM-3 Block IA into its operational forces and will receive data sufficient to maintain and support the systems.

The AEGIS Weapon System and Standard missiles will be used on JMSDF ships and will provide, in concert with JSDF PAC-3 Patriot missiles, the initial ballistic missile defense for mainland Japan. Japan already has the upgraded AEGIS Weapon System and SM-3 Block IA Standard missiles in its inventory and will have no difficulty absorbing the additional upgraded Weapon System and missiles.

The principal contractors will be:

Lockheed-Martin Maritime System and Sensors	**Moorestown, New Jersey**
Raytheon Company, Equipment Division	**Tucson, Arizona**
BAE	**Minneapolis, Minnesota**

There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Japan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 07-26

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The SM-3 Block IA Standard missile hardware includes the Propulsion Train (MK-72 Booster and Steering Control Section), the Third Stage Rocket Motor, Guidance Section, and Kinetic Warhead. The Propulsion Train and Third Stage Rocket Motor are classified Confidential. The Guidance Section and the Kinetic Warhead are classified Secret. Certain operating frequencies and performance characteristics are classified Secret. Confidential documentation to be provided includes: parametric documents, general performance data, firing guidance, dynamics information, and some flight analysis procedures.

2. Upgrades to the Vertical Launching System (VLS) Global Positioning Satellite (GPS) Integrator (VGI) include initialization data enhancements to the fiber optic distribution system connecting the VGI to the missile to support tactical requirements. VGI enhancements will be accomplished through commercial off-the-shelf products and are considered Unclassified. The software associated with these enhancements is classified Confidential.

3. Further enhancements include upgrades to the Launch Control Computer Program (LCCP), Launch Control Unit computer programs, and Launch Sequencer computer programs to control training, warfare, decryption and digital data processing. The LCCP is classified Confidential.

4. The Aegis Weapon System hardware upgrades include modifications to the current SPY-1D and Command and Decision configurations. Modifications to the SPY-1D configuration include upgraded signal processor cards and providing a Mission Planner Laptop and System Calibration Using Satellites Laptop. While the hardware is Unclassified, the computer programs that run on these systems are classified Secret. Command and Decision modifications include providing a TAC-3600 adjunct computer and circuit card assemblies to provide an additional internal network path. While the hardware is Unclassified, the computer programs running on

the system are classified Secret. Interoperability enhancements include additional capability of secure communications and cueing via upgrading to a Common Data Link Management System. This will upgrade the Common Shipboard Data Terminal Set and the Command and Control Processor. Satellite TADIL-J functionality will additionally be incorporated. These interoperability systems are classified Secret.

5. The AEGIS documentation in general is Unclassified; however, some operational and maintenance manuals are classified Confidential and one AEGIS maintenance manual supplement is classified Secret. The manuals and technical documents are limited to that necessary for operational organizational maintenance.

6. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 07–2986 Filed 6–15–07; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for Outdoor Research, Development, Testing & Evaluation Activities at Naval Surface Warfare Center, Dahlgren Site, King George County, VA and To Announce Public Scoping Meetings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section (102)(2)(c) of the National Environmental Policy Act (NEPA) of 1969, and the regulations implemented by the Council on Environmental Quality (40 CFR parts 1500–1508), the Department of the Navy (Navy) announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental consequences of expanding Naval Surface Warfare Center Dahlgren Site's (NSWCDL) research, development, test and evaluation (RDT&E) activities taking place outdoors on the Potomac River Test Range Complex, the Explosives Experimental Area, and Mission Areas. RDT&E activities are conducted in support of NSWCDL's mission requirements in surface warfare, surface ship combat systems, strategic systems, ordnance, and special warfare systems. These activities include outdoor operations that require the use of ordnance, lasers, electromagnetic fields, and chemical and biological simulants (imitations).

DATES AND ADDRESSES: Public scoping meetings will be held in King George, Westmoreland, and Northumberland counties, Virginia, and Charles and St. Mary's counties, Maryland, to receive oral and written comments on environmental concerns that should be addressed in the EIS. The public scoping meetings will be held at the following dates, times, and locations:

1. July 23, 2007, 5 p.m.–7 p.m., Shiloh Baptist Church, 13457 Kings Highway, King George, VA.
2. July 24, 2007, 6 p.m.–8 p.m., Christ Episcopal Church, 37497 Zach Fowler Road, Chaptico, MD.
3. July 25, 2007, 5 p.m.–7 p.m., LaPlata Volunteer Fire Department, 911 Washington Street, LaPlata, MD.
4. July 30, 2007, 6 p.m.–8 p.m., Saint Mary's Episcopal Church, 203 Dennison Street, Colonial Beach, VA.
5. July 31, 2007, 6 p.m.–8 p.m., Callao Rescue Squad Hall, 1348 Northumberland Highway, Callao, VA.

Anyone requiring special accommodations, such as a sign language interpreter, should contact Stacia Courtney, NSWCDL Public Affairs Office, by calling 540–653–8154 or by e-mailing *stacia.courtney@navy.mil* no later than three business days prior to the public meeting you wish to attend.

FOR FURTHER INFORMATION CONTACT: Ms. Stacia Courtney, Naval Surface Warfare Center Dahlgren Division, Corporate Communications Office (C6), 6509 Sampson Road, Suite 213, Dahlgren, VA 22448–5108; phone 540–653–8154; fax 540–653–4679; e-mail: *stacia.courtney@navy.mil.*

SUPPLEMENTARY INFORMATION: The Action Proponent, NSWCDL, currently conducts outdoor RDT&E activities on the Potomac River Test Range (PRTR) Complex, the Explosives Experimental Area (EEA), and adjoining Mission Areas. The environmental consequences of conducting these activities to date have been addressed on a test-by-test or program-by-program basis, which can lead to delays in carrying out RDT&E activities.

The Proposed Action is to expand NSWCDL's RDT&E capabilities within the PRTR, the EEA, and Mission Areas. The purpose is to enable NSWCDL to meet mission-related warfare and force protection requirements by providing RDT&E for ordnance, surface ship combat systems, force level warfare, and force protection operations. The need for the Proposed Action is to enable the Navy and other stakeholders to successfully meet current and future national and global defense challenges by developing a robust capability to carry out assigned RDT&E activities on NSWCDL's PRTR, EEA, and Mission Areas.

At this point in the planning process, NSWCDL foresees evaluating the impacts of three alternatives in the EIS. The No Action Alternative describes existing baseline RDT&E mission activities and includes documentation for such activities. The No Action Alternative addresses past and current mission activities within NSWCDL's PRTR, EEA and Mission Areas. Alternative 1 includes existing baseline mission activities, as well as future RDT&E mission activities to satisfy known workload requirements over approximately the next seven years. Alternative 1 provides for an increase in

the number of RDT&E mission activities as well as new applications of existing technology. Alternative 2 includes existing baseline RDT&E mission activities, known future RDT&E mission activities over approximately the next seven years, and projected increases in test activities over approximately the next 15 years, based on a continual trend. Alternative 2 generally provides for a 15 percent increase in the number of mission activities above Alternative 1 levels plus new applications of existing technology.

The EIS will evaluate the potential environmental effects resulting from the identified alternatives. Issues to be addressed will include, but may not be limited to, the following areas: (1) Land use, plans, and coastal zone consistency; (2) Physical resources—air quality and water quality; (3) Noise from detonations and the firing of guns; (4) Biological resources including wildlife, submerged aquatic vegetation, threatened & endangered species and otherwise protected species (short-nosed sturgeon, marine mammals and migratory birds), fisheries, including an analysis of essential fish habitat, riverine communities, and special biological resource areas; (5) Socioeconomic issues—including recreational and commercial uses of the Potomac River and restricted airspace, property values, environmental justice, and risks to children; (6) Cultural resources—effects on sites on or near the Potomac River; (7) Safety—cleanup, handling, storage, and transport of hazardous materials, unexploded ordnance, lasers, electromagnetic fields, and chemical and biological simulants (imitations).

The Navy is initiating the scoping process to identify community concerns and local issues that should be addressed in the EIS. Federal, state, and local agencies as well as interested persons are encouraged to provide oral and/or written comments to NWSCDL to identify specific issues or topics of environmental concern. The Navy will consider these comments in determining the scope of the EIS. Written comments on the scope of the EIS must be postmarked by August 14, 2007, and should be mailed to: Ms. Stacia Courtney, Naval Surface Warfare Center Dahlgren Division, Corporate Communications Office (C6), 6509 Sampson Road, Suite 213, Dahlgren, VA 22448–5108. Comments can be faxed to 540–653–4679 or e-mailed to *stacia.courtney@navy.mil.*

Dated: 11 June 2007.

L.R. Almand,

Office of the Judge Advocate General, U.S. Navy, Administrative Law Division, Federal Register Liaison Officer.

[FR Doc. E7–11674 Filed 6–15–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: U.S. Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the U.S. Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent No. 6,996,493: PROGRAMMED COMPUTATION OF PREDICTED PRESSURE LOADS ON MARINE VESSELS.//U.S. Patent No. 7,025,014: SEA VESSEL RETRIEVAL OF UNMANNED UNDERWATER VEHICLES.//U.S. Patent No. 7,025,112: PRETREATMENT PROCESSING OF METAL-MATRIX CARBIDE POWER FOR MOLD CASTING OF PRODUCTS. //U.S. Patent No. 7,026,738: QUAD SHAFT CONTRAROTATING HOMOPOLAR MOTOR.//U.S. Patent No. 7,026,981: SURFACE INTERACTION REGION METHODOLOGY FOR DELIMITING MULTIPATH PROPAGATION INQUIRY://U.S. Patent No. 7,041,987: INSPECTION OF COMMON MATERIALS FOR RADIATION EXPOSURE BY ATOMIC AND/OR MAGNETIC FORCE MICROSCOPY.// U.S. Patent No. 7,052,226: WHEELED CONTAINER TRANSFER SELF-ALIGNING PLATFORM FOR MARINE TERMINAL CRANE.//U.S. Patent No. 7,052,607: BIOREACTOR PROCESSING METHOD WITHIN A TANK INTERNALLY CHAMBERED TO SEQUENTIALLY PERFORM BIOLOGICAL TREATMENT AND MEMBRANE FILTRATION.//U.S. Patent No. 7,059,566: UNMANNED AERIAL VEHICLE FOR LOGISTICAL DELIVERY.//U.S. Patent No. 7,068,027: SYSTEM FOR MEASUREMENT OF METALLIC DEBRIS IN FLUID.//U.S. Patent No. 7,070,882: REACTIVE METAL HYDROGEL/INERT POLYMER COMPOSITE ANODE AND PRIMARY METAL-AIR BATTERY.//U.S. Patent No. 7,082,355: WAKE WASH SEVERITY MONITOR FOR HIGH SPEED VESSELS.//U.S. Patent No. 7,090,893: RHENIUM COMPOSITE.//U.S. Patent No. 7,101,237: PROPELLOR BLADE ADJUSTMENT SYSTEM FOR PROPULSION THROUGH FLUID ENVIRONMENTS UNDER CHANGING CONDITIONS.//U.S. Patent No. 7,110,891: DEGAUSSING VULNERABILITY DISPLAY PROGRAM.//U.S. Patent No. 7,108,782: MARINE VESSEL ONBOARD WASTEWATER TREATMENT SYSTEM.//U.S. Patent No. 7,111,523: ROTATIONAL POWER TRANSMITTING DRIVE COMPONENT WITH IMPROVED ACOUSTIC AND ASSEMBLY CHARACTERISTICS.//U.S. Patent No. 7,111,809: AIRCRAFT EXCESSIVE FUEL DUMPING EJECTION PARALLEL TO FLIGHT DIRECTION.// U.S. Patent No. 7,114,764: MINE AND COLLISION PROTECTION FOR PASSENGER VEHICLE.//U.S. Patent No. 7,122,117: SELF-CLEANING COMPOSITE DECK DRAIN.//U.S. Patent No. 7,124,698: AUXILIARY FACILITIES FOR THE MANEUVERING OF SUBMERGED WATER JET PROPELLED SEA CRAFT.//U.S. Patent No. 7,136,324: PRESSURE EQUALIZING FLUIDBORNE SOUND PROJECTOR.//U.S. Patent No. 7,138,743: SOLID AND LIQUID HYBRID CURRENT TRANSFERRING BRUSH.// U.S. Patent No. 7,138,941: IN-SITU CALIBRATION OF RADAR FREQUENCY MEASUREMENT.//U.S. Patent No. 7,139,223: DEEP WATER SURVEILLANCE SYSTEM.//U.S. Patent No. 7,144,282: CONTOURED RUDDER MANEUVERING OF WATERJET PROPELLED SEA CRAFT.//U.S. Patent No. 7,148,600: ELECTRICAL CURRENT TRANSFERRING AND BRUSH PRESSURE EXERTING INTERLOCKING SLIP RING ASSEMBLY.//U.S. Patent No. 7,149,150: UNDERWATER SURVEILLANCE SYSTEM.//U.S. Patent No. 7,152,375: SEAL INTEGRITY DETECTION SYSTEM.//U.S. Patent No. 7,163,107: OIL/WATER SEPARATOR WITH ENHANCED IN-SITU CLEANING.//U.S. Patent No. 7,163,138: FRICTION STIRRED INTRODUCTION OF PARTICLES INTO A METALLIC SUBSTRATE FOR SURFACE DURABILITY TREATMENT.//U.S. Patent application Serial No. 7,178,782: QUIET OPENING BALL VALVE.//U.S. Patent application Serial No. 7,179,090: INTEGRAL DUAL-COMPONENT CURRENT COLLECTION DEVICE.//U.S. Patent application Serial No. 7,180,581: LITHOGRAPHY FOR OPTICAL PATTERNING OF FLUIDS.//U.S. Patent application Serial No. 7,180,828: NON-KINKING OIL-FILLED ACOUSTIC SENSOR STAVE.//U.S. Patent application Serial No. 7,198,001:

UNDERWATER INSPECTION MEASUREMENT SURVEY.//U.S. Patent application Serial No. 7,206,258: DUAL RESPONSE ACOUSTICAL SENSOR SYSTEM.//U.S. Patent application Serial No. 7,214,306: ELEVATED POTENTIAL DEPOSITION OF RHENIUM ON GRAPHITE SUBSTRATES FROM A REO.SUB.2/H.SUB.2O.SUB.2 SOLUTION.//U.S. Patent application Serial No. 7,114,764: MINE AND COLLISION PROTECTION FOR PASSENGER VEHICLE.//PTC international application No. PTC/US2005/013934: ARMOR INCLUDING A STRAIN RATE HARDENING ELASTOMER.

ADDRESSES: Requests for copies of the patents cited should be directed to: Technology Transfer Office, Naval Surface Warfare Center Carderock Division, Code 0022, 9500 MacArthur Blvd, West Bethesda, MD 20817–5700, and must include the patent number.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Teter, Director, Technology Transfer Office, Naval Surface Warfare Center Carderock Division, Code 0022, 9500 MacArthur Blvd, West Bethesda, MD 20817–5700, telephone 301–227–4299.

(*Authority:* 35 U.S.C. 207, 37 CFR Part 404.)

Dated: June 11, 2007.

L.R. Almand,

Office of the Judge Advocate General, Administrative Law Division, Federal Register Liaison Officer.

[FR Doc. E7–11678 Filed 6–15–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Cellphire, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Cellphire, Inc., a revocable, nonassignable, exclusive license to practice in the field of use in transfusable therapeutics; topical therapeutics for hemostasis and wound care; and reagents for hematology analysis, clinical diagnostics, and research in the United States and certain foreign countries, the Government-owned invention described in U.S. Patent No. 5,736,313 entitled ''A Method of Lyophilizing Platelets by Incubation with High Carbohydrate Concentrations and Supercooling Prior to Freezing'', Navy Case No. 76,086 and any continuations, divisionals or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than July 3, 2007.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Rita Manak, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to U.S. Postal delays, please fax 202–404–7920, e-mail: *rita.manak@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: 11 June 2007.

L.R. Almand,

Office of the Judge Advocate General, Administrative Law Division, Federal Register Liaison Officer.

[FR Doc. E7–11671 Filed 6–15–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; NaturalNano, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to NaturalNano, Inc., a revocable, nonassignable, exclusive license to practice in the fields of use in Electromagnetic Shielding; Strength Enhancement; Cosmetics; Odor Masking; Eluting Implantable Medical Devices; Visibility Enhanced Implantable Medical Devices; Eluting Bandages; Local Drug Delivery; Agricultural; Vertebrate Aversion; Veterinary; Ink and Paper; Electronics; Fabrics and Textiles; all other fields of use specifically excluding: Halloysite in Building Materials and Petroleum; and Paint in the United States and certain foreign countries, the Government-owned inventions described in U.S. Patent No. 6,913,828: Production of Hollow Metal Microcylinders from Lipids, Navy Case No. 83,603.//U.S. Patent No. 6,936,215: Processing Methodology for the Rational Control of Bilayer Numbers Leading to High Efficiency Production of Lipid Microtubules, Navy Case No. 77,839.//U.S. Patent Application Serial No. 11/229,433: Novel Biodegradable Biofouling Control Coating and Method of Formulation, Navy Case No. 96,826 and any continuations, divisionals or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than July 3, 2007.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Dr. Rita Manak, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to U.S. Postal delays, please fax 202–404–7920, e-mail: *techtran@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: June 11, 2007.

L. R. Almand,

Office of the Judge Advocate General, Administrative Law Division, Federal Register Liaison Officer.

[FR Doc. E7–11669 Filed 6–15–07; 8:45 am]

BILLING CODE 3810–FF–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission (EAC).

ACTION: Notice of virtual public forum for EAC Board of Advisors.

DATE AND TIME: Monday, July 2, 2007, 7 a.m. EDT through Friday, July 6, 2007, 6 p.m. EDT.

PLACE: EAC Board of Advisors Virtual Meeting Room at *http://www.eac.gov.* Once at the main page of EAC's Web site, viewers should click the link to the Board of Advisors Virtual Meeting Room. The virtual meeting room will open on Monday, July 2, 2007, at 7 a.m. EDT and will close on Friday, July 6, 2007, at 6 p.m. EDT. The site will be available 24 hours per day during that 5-day period.

PURPOSE: The EAC Board of Advisors will review and provide comment on a draft EAC manual on Poll Worker Recruitment, Training and Retention. The draft manual contains best practices suggestions. The EAC Board of Advisors Virtual Meeting Room was established to enable the Board of Advisors to

conduct business in an efficient manner in a public forum, including being able to review and discuss draft documents, when it is not feasible for an in-person board meeting. The Board of Advisors will not take any votes or propose any resolutions during the 5-day forum of July 2–6, 2007. Members will post comments about the draft EAC manual on Poll Worker Recruitment, Training and Retention.

This activity is open to the public. The public may view the proceedings of this special forum by visiting the EAC Standards Board virtual meeting room at *http://www.eac.gov* at any time between Monday, July 2, 2007, 7 a.m. EDT and Friday, July 6, 2007, 6 p.m. EDT. The public also may view the draft manual on poll worker recruitment, training and retention, which will be posted on EAC's Web site beginning July 2, 2007. The public may file written statements to the EAC Board of Advisors at *boardofadvisors@eac.gov.* Data on EAC's Web site is accessible to visitors with disabilities and meets the requirements of section 508 of the Rehabilitation Act.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone: (202) 566–3100.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 07–3023 Filed 6–14–07; 3:44 pm]

BILLING CODE 6820–KF–M

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission (EAC).

ACTION: Notice of Virtual Public Forum for EAC Standards Board.

DATE AND TIME: Monday, July 2, 2007, 7 a.m. EDT through Friday, July 6, 2007, 6 p.m. EDT.

PLACE: EAC Standards Board Virtual Meeting Room at *http://www.eac.gov.* Once at the main page of EAC's Web site, viewers should click the link to the Standards Board Virtual Meeting Room. The virtual meeting room will open on Monday, July 2, 2007, at 7 a.m. EDT and will close on Friday, July 6, 2007, at 6 p.m. EDT. The site will be available 24 hours per day during that 5-day period.

PURPOSE: The EAC Standards Board will review and provide comment on a draft EAC manual on Poll Worker Recruitment, Training and Retention. The draft manual contains best practices suggestions. The EAC Standards Board Virtual Meeting Room was established to enable the Standards Board to conduct business in an efficient manner in a public forum, including being able to review and discuss draft documents, when it is not feasible for an in-person board meeting. The Standards Board will not take any votes or propose any resolutions during the 5-day forum of July 2–6, 2007. Members will post comments about the draft EAC manual on Poll Worker Recruitment, Training and Retention.

This activity is open to the public. The public may view the proceedings of this special forum by visiting the EAC Standards Board virtual meeting room at *http://www.eac.gov.* At any time between Monday, July 2, 2007, 7 a.m. EDT and Friday, July 6, 2007, 6 p.m. EDT. The public also may view the draft manual on poll worker recruitment, training and retention, which will be posted on EAC's Web site beginning July 2, 2007. The public may file written statements to the EAC Standards Board at *standardsboard@eac.gov.* Data on EAC's Web site is accessible to visitors with disabilities and meets the requirements of section 508 of the rehabilitation act.

FOR INFORMATION CONTACT: Bryan Whitener, Telephone: (202) 566–3100.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 07–3024 Filed 6–14–07; 3:44 pm]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–476–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 8, 2007.

Take notice that on June 5, 2007, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective July 7, 2007:

Fifth Revised Sheet No. 180
Original Sheet No. 180A
Twelfth Revised Sheet No. 282
Original Sheet No. 282A
Third Revised Sheet No. 319

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 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,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11652 Filed 6–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–479–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 8, 2007.

Take notice that on June 5, 2007, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of September 1, 2007:

Third Revised Sheet No. 228
Original Sheet No. 540A
Original Sheet No. 540B

Original Sheet No. 540C
Original Sheet No. 540D

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 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,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11649 Filed 6–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–478–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 8, 2007.

Take notice that on June 5, 2007, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, effective September 1, 2007:

Second Revised Sheet No. 86
Original Sheet No. 333D
Original Sheet No. 333E
Original Sheet No. 333F
Original Sheet No. 333G

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 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,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11650 Filed 6–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–220–024]

Great Lakes Gas Transmission Limited Partnership; Notice of Negotiated Rate Agreement

June 8, 2007.

Take notice that on June 1, 2007, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed for disclosure, a transportation service agreement pursuant to Great Lakes' Rate Schedule FT entered into by Great Lakes and ANR Pipeline Company (ANR) (FT Service Agreement). The FT Service Agreement being filed reflects a negotiated rate arrangement between Great Lakes and ANR commencing January 1, 2008.

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 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,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11655 Filed 6–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–480–000]

Hardy Storage Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

June 11, 2007.

Take notice that on June 6, 2007, Hardy Storage Company, LLC (Hardy) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective July 6, 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 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,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11644 Filed 6–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–19–003]

Illinois Municipal Electric Agency; Notice of Compliance Filing

June 8, 2007.

Take notice that on June 1, 2007, Illinois Municipal Electric Agency filed a revised tariff sheet for Rate Schedule No. 1, in compliance with the Federal Energy Regulatory Commission's (Commission's) Order No. 614, 18 CFR 35.7 and the Commission's May 3, 2007 Order, ''Order Approving Uncontested Settlement Agreement,'' 119 FERC ¶ 61,112 (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, 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 on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

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,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 22, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11648 Filed 6–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–474–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

June 8, 2007.

Take notice that on May 31, 2007, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, 102nd Revised Sheet No. 9, to become effective June 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 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,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11653 Filed 6–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RR07–11–000]

North American Electric Reliability Corporation; Order Approving Regional Reliability Standards for the Western Interconnection and Directing Modifications

Issued June 8, 2007.

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

1. On March 26, 2007, the North American Electric Reliability Corporation (NERC) submitted for approval eight proposed regional Reliability Standards for the Western Electricity Coordinating Council (WECC). The proposed regional Reliability Standards would apply in the Western Interconnection in addition to the 83 mandatory Reliability Standards developed by NERC that will take effect on a nationwide basis beginning in June 2007.[1] The proposed regional Reliability Standards would allow the continuation of certain reliability practices that are currently in effect in the Western Interconnection. As discussed below, pursuant to section 215(d)(2) of the Federal Power Act (FPA), the Commission approves the proposed regional Reliability Standards. As a separate action, pursuant to section 215(d)(5) of the FPA, the Commission directs WECC to develop several specific modifications to the regional Reliability Standards when WECC develops, through its Reliability Standards development process, permanent, replacement Reliability Standards.

I. Background

A. EPAct 2005 and Mandatory Reliability Standards

2. In August 2005, the Electricity Modernization Act of 2005, which is Title XII, Subtitle A, of the Energy Policy Act of 2005 (EPAct 2005), was enacted into law.[2] EPAct 2005 adds a new section 215 to the FPA, which requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards.[3] Before a Reliability Standard may take effect, the ERO must submit the standard to the Commission and obtain the Commission's approval.[4] Once approved, the Reliability Standard can be enforced by the ERO subject to Commission oversight, or the Commission can independently enforce the Reliability Standard.[5]

3. On February 3, 2006, the Commission issued Order No. 672, implementing section 215 of the FPA.[6] Pursuant to Order No. 672, the Commission certified one organization, NERC, as the ERO.[7] Reliability Standards that the ERO proposes to the Commission may include Reliability Standards that are proposed to the ERO by a Regional Entity.[8] A Regional Entity is an entity that has been approved by the Commission to enforce Reliability Standards under delegated authority from the ERO.[9] When the ERO reviews a regional Reliability Standard that would be applicable on an Interconnnection-wide basis and that has been proposed by a Regional Entity organized on an Interconnection-wide basis, the ERO must rebuttably presume that the regional Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[10]

4. When the ERO submits a proposed Reliability Standard to the Commission, the ERO must: (1) Describe the basis and purpose of the Reliability Standard; (2) summarize the development and review proceedings that led to the Reliability Standard; and (3) demonstrate that the Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[11]

5. In reviewing the ERO's submission, the Commission will give due weight to the ERO's technical expertise, except concerning the effect of a proposed Reliability Standard on competition.[12] The Commission will also give due weight to the technical expertise of a Regional Entity organized on an Interconnection-wide basis with respect to a proposed Reliability Standard to be applicable within that Interconnection.[13] Moreover, the Commission may give ''due deference'' to the advice of a Regional Advisory Body that is organized on an Interconnection-wide basis.[14]

6. The Commission may approve a proposed Reliability Standard if the Commission finds it is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[15] In addition, the Commission explained in Order No. 672 that ''uniformity of Reliability Standards should be the goal and the practice, the rule rather than the exception.'' [16] Yet, the Commission recognized that ''the goal of greater uniformity does not, however, mean that regional differences cannot exist.[17] The Commission then provided the following guidance:

> As a general matter, we will accept the following two types of regional differences, provided they are otherwise just, reasonable, not unduly discriminatory or preferential, and in the public interest, as required by the statute: (1) A regional difference that is more stringent than the continent-wide Reliability Standard, including a regional difference that addresses matters that the continent-wide Reliability Standard does not; and (2) a

[1] *See Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 118 FERC ¶ 61,218 (March 16, 2007), 72 FR 16,416 (April 4, 2007), *reh'g pending.*

[2] Energy Policy Act of 2005, Pub. L. No. 109–58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005), *to be codified* at 16 U.S.C. 824o.

[3] 16 U.S.C. 824o(c)–(e).

[4] 16 U.S.C. 824o(d).

[5] 16 U.S.C. 824o(e)(3).

[6] *Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204 (2006), *order on reh'g*, Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[7] *See North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 (*ERO Certification Order*), *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006).

[8] 16 U.S.C. 824o(e)(4).

[9] 16 U.S.C. 824o(a)(7) and (e)(4).

[10] 16 U.S.C. 824o(d)(3); 18 CFR 39.5(b).

[11] 18 CFR 39.5(a).

[12] 16 U.S.C. 824o(d)(2).

[13] *Id.*

[14] 16 U.S.C. 824o(j). A Regional Advisory Body is an entity established upon petition to the Commission that is organized to advise the ERO, a Regional Entity or the Commission regarding certain matters including whether a Reliability Standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest. 18 CFR 39.13(c) (2006).

[15] 16 U.S.C. 824o(d)(2).

[16] Order No. 672 at P 290.

[17] *Id.* at 291.

regional Reliability Standard that is necessitated by a physical difference in the Bulk-Power System.[18]

B. WECC

7. WECC is responsible for overseeing transmission system reliability in the Western Interconnection since 2002, when WECC was formed from predecessor reliability organizations. The WECC region encompasses nearly 1.8 million square miles, including 14 western U.S. states, the Canadian provinces of Alberta and British Columbia, and the northern portion of Baja California in Mexico. WECC developed a Reliability Management System (RMS) pursuant to which transmission operators in the Western Interconnection agreed by contract to be bound by the WECC reliability criteria and sanctions for non-compliance. According to WECC, the criteria are recognized by all WECC members but are contractually binding only on members that signed an RMS Agreement.[19]

8. In an April 19, 2007 order, the Commission accepted delegation agreements between NERC and each of eight Regional Entities.[20] In the April 19 Order, the Commission accepted WECC as a Regional Entity organized on an Interconnection-wide basis. In addition, the Commission accepted WECC's Standards Development Manual which sets forth WECC's Reliability Standards development process.[21] The Commission also directed WECC to make certain clarifications to its Standards Development Manual in a filing to be submitted within 180 days of the order.

C. The Eight Proposed Regional Reliability Standards

9. NERC has submitted for the Commission's approval the following eight regional Reliability Standards that were proposed to NERC by WECC to apply in the Western Interconnection:

WECC–BAL–STD–002–0 (Operating Reserves)
WECC–IRO–STD–006–0 (Qualified Path Unscheduled Flow Relief)
WECC–PRC–STD–001–1 (Certification of Protective Relay Applications and Settings)
WECC–PRC–STD–003–1 (Protective Relay and Remedial Action Scheme Misoperation)
WECC–PRC–STD–005–1 (Transmission Maintenance)
WECC–TOP–STD–007–0 (Operating Transfer Capability)
WECC–VAR–STD–002a–1 (Automatic Voltage Regulators)
WECC–VAR–STD–002b–1 (Power System Stabilizers)

10. In its March 26, 2007 filing (NERC Filing), NERC states that the proposed regional Reliability Standards are translations of existing reliability criteria under WECC's RMS program. According to NERC, WECC developed most of the criteria in the late 1990s in response to a series of black-outs in the Western Interconnection.[22] The proposed regional Reliability Standards would make eight of those RMS criteria binding on the applicable subset of users, owners and operators of the Bulk-Power System in the United States portion of the Western Interconnection, as identified in each proposed standard. The regional Reliability Standards would supplement rather than replace the Commission-approved Reliability Standards developed by the ERO that will take effect in June 2007.

11. In translating WECC's existing practices to proposed regional Reliability Standards, WECC proceeded as follows.[23] In 2006, a WECC task force identified criteria in the RMS Agreement that, in the task force's view, should be binding on all users, owners and operators of the regional Bulk-Power System. The task force chose eight of the identified criteria that have the highest priority and that can be implemented in the near term. WECC then used expedited procedures to develop the eight regional Reliability Standards. WECC's rules provide that, when WECC develops a Reliability Standard under expedited procedures, WECC must later develop a permanent, replacement standard using more extensive procedures.

12. On October 5, 2006, using its expedited procedures, WECC solicited comment on whether the eight regional Reliability Standards accurately reflect practices under the RMS Agreement. Commenters raised concerns that sanctions under the eight regional Reliability Standards are inconsistent with NERC Reliability Standards, do not provide clear guidance for measuring compliance, and might be applied in an anti-competitive manner.[24] The task force responded that the regional Reliability Standards would remain in effect for at most one year and that WECC would consider the commenters' concerns when developing permanent, replacement standards.[25] WECC's Board of Directors approved the eight regional Reliability Standards on January 5, 2007.

13. On December 22, 2006, in anticipation of approval by its board, WECC submitted the proposed regional Reliability Standards to NERC. On January 9, 2007, NERC responded with detailed comments. According to NERC, its primary concern was that the sanctions in the proposed regional Reliability Standards were inconsistent with NERC Sanction Guidelines.[26] NERC's January 9 report also identified NERC's preferred nomenclature for Reliability Standards, identified NERC's preferred format for submission, and identified language in the proposed regional Reliability Standards that NERC found ambiguous or incorrect.[27] By letter dated February 28, 2007, WECC responded by committing to address the shortcomings that NERC had identified when WECC develops permanent, replacement standards.[28]

14. Also in response to WECC's submission, NERC initiated a 45-day comment period. NERC received six sets of comments. NERC found that WECC had addressed the commenters' concerns by committing to correct shortcomings in the proposed regional Reliability Standards within one year of Commission approval. NERC generally applied a rebuttable presumption that the proposed regional Reliability Standards meet applicable requirements. However, because each of the proposed regional Reliability Standards contains a sanction table that is inconsistent with the NERC Sanction Guidelines, the NERC board concluded that the rebuttable presumption was overcome with respect to this one component of the proposed standards.[29] Finally, NERC found that the proposed one-year term was inconsistent with the Commission's prior invalidation of automatic expiration dates for Reliability Standards.[30]

15. On February 8, 2007, the Western Interconnection Regional Advisory Body (WIRAB) advised NERC that it should approve the proposed regional Reliability Standards as necessary for Reliable Operation of the Western Interconnection and as meeting the legal

[18] *Id.*

[19] *See* WECC April 17, 2007 Comments at 16.

[20] *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060 at P 432 (2007) (*April 19 Order*).

[21] *Id.* at PP 469–470.

[22] NERC Filing at 5–6.

[23] *See id.*, Ex. C (Record of Development, Comments and Correspondence).

[24] *Id.*, Ex. C, Attachment 1.

[25] *Id.*, Ex. A at 1 and Ex. C, Attachment 2 at 8.

[26] *Id.* at 3–4. *See also ERO Certification Order* at P 299.

[27] *Id.*, Ex. C, Attachment 3.

[28] *Id.*, Ex. C, Attachment 4.

[29] NERC Filing at 9.

[30] *Id.* at 2–4, 8–9 (*citing North American Electric Reliability Corp.*, 118 FERC 61,030 at P 30 (2007)).

standard for approval set forth in section 215 of the FPA.[31]

16. On March 2007, NERC approved the proposed regional Reliability Standards on the conditions that WECC: (1) Remove the one-year term limitation; (2) address the shortcomings [32] in the standards within one year of approval by the Commission, including removing the sanctions table that conflicts with the NERC Sanction Guidelines; (3) until the WECC sanction table is removed, follow the NERC Sanction Guidelines to the maximum extent possible within the limits of the WECC sanction table; and (4) monitor and enforce the standards under a delegation agreement between NERC and WECC, once that agreement is approved.[33]

17. NERC submitted its present request for the Commission's approval on March 26, 2007. In April 2007, the Commission approved 83 ERO Reliability Standards that apply nationwide, except for Alaska and Hawaii. NERC and WECC request that the proposed regional Reliability Standards take effect as soon as practical and, if possible, on the same day as the nationwide Reliability Standards.

D. Notice of Filing and Responsive Pleadings

18. Notice of the NERC Filing was published in the **Federal Register**, 72 Fed. Reg. 17,544 (April 9, 2007), with interventions, comments and protests due on or before April 17, 2007. Motions to intervene were filed by Modesto Irrigation District, New York Transmission Owners, Southern California Edison Company, and Transmission Agency of Northern California. Motions to intervene and comment or protest were filed by PacifiCorp, WECC, Xcel Energy Services, Inc. (Xcel), PPL EnergyPlus, LLC and PPL Montana, LLC (PPL), and Cogeneration Association of California and Energy Producers and Users Coalition (California Cogeneration). WIRAB submitted timely advice to the Commission regarding the NERC Filing. An untimely motion to intervene was filed by Pacific Gas and Electric Company (PG&E).

1. Comments in Support

19. WECC states that the proposed regional Reliability Standards, which are exact translations of existing regional criteria, either address matters not addressed in the Commission-approved ERO Reliability Standards or contain more stringent requirements than the ERO standards.[34] WECC states that, with the exception of WECC–IRO–STD–006–0, the WECC regional Reliability Standard that implements the West's unique approach to mitigation of unscheduled flow, which the Commission approved as superior to the ERO Reliability Standard,[35] none of the regional Reliability Standards in any way displace the ERO requirements approved by the Commission. Rather, users, owners and operators in the Western Interconnection will still be required to comply with all of the requirements of the approved ERO Reliability Standards.

20. WECC contends that the eight regional Reliability Standards satisfy the relevant statutory and regulatory criteria for approval. It states that only a few commenters raised substantive concerns in the WECC standard development process regarding several potentially ambiguous terms such as ''load responsibility,'' ''firm transactions,'' and ''Receiver;'' and that WECC has committed to address these issues in developing permanent regional Reliability Standards.

21. WECC acknowledges that the sanctions tables in the proposed regional Reliability Standards differ from the NERC Sanction Guidelines. WECC states that it plans to propose replacement standards that incorporate the NERC Sanction Guidelines and address other concerns of NERC and stakeholders. WECC also explains that the regional sanctions would apply only when an offense was not covered by a sanction under the ERO Reliability Standards and that the regional Reliability Standards preclude the possibility of being sanctioned under both the WECC and ERO Reliability Standards for the same non-compliance occurrence.

22. WIRAB advises that the proposed regional Reliability Standards are necessary for the Reliable Operation of the Western Interconnection and should take effect on the effective date of the 83 ERO Reliability Standards. WIRAB also advises reinstatement of the one-year term limitation, noting that WECC approved the regional Reliability Standards only as interim standards. WIRAB suggests that it is unclear that NERC has authority to eliminate the one-year term limitation. Finally, WIRAB expresses concern that NERC effectively disregarded the statutory rebuttable presumption without sufficient legal analysis.[36]

23. PacifiCorp states that, given the unique nature of the Western transmission system, it supports the eight regional Reliability Standards as necessary for addressing reliability concerns of the Western Interconnection.

2. Protests

24. Xcel, PPL and California Cogeneration filed protests or comments in opposition to one or more of the proposed regional Reliability Standards. California Cogeneration objects to proposed regional Reliability Standard WECC–BAL–STD–002–0 (Operating Reserves), which, in relevant part, requires balancing authorities to maintain operating reserves equal to a stated percentage of ''load responsibility.'' According to California Cogeneration, ''load responsibility'' should not include behind-the-meter load that a cogenerator serves at its industrial or commercial host. It asserts that a balancing authority is not obligated to serve that load in the case of an outage on the Bulk-Power System and therefore should not be required to maintain associated reserves.[37]

25. PPL, which owns and operates electrical facilities and markets electricity in the Western Interconnection, objects to WECC–IRO–STD–006–0, addressing the mitigation of unscheduled flows. According to PPL, WECC has not justified the need for this regional Reliability Standard, which imposes requirements on ''receivers'' that are not identified as an applicable entity, and improperly imposes mitigation obligations on load-serving entities (LSEs) and marketers that lack authority or ability to comply with those obligations.

26. Xcel, which owns generation and transmission facilities and serves electricity customers in the Western Interconnection, argues that the Commission lacks authority to review the proposed regional Reliability Standards because WECC was not a Regional Entity at the time it submitted the proposed regional Reliability

[31] *Id.* at 8–9. *In Governors of Arizona, California, Colorado, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming*, 116 FERC ¶ 61,061 at P 27 (2006), the Commission established WIRAB as a Regional Reliability body pursuant to section 215(j) of the FPA.

[32] The shortcomings in the regional Reliability Standards were identified by NERC in a January 9, 2007 letter to WECC. *See* NERC Filing, Ex. C at 128–139.

[33] *Id.* at 8–9.

[34] Our discussion below of each regional Reliability Standard includes WECC's explanation of how it is more stringent than the relevant ERO Reliability Standard.

[35] WECC Comments at 14 (*citing* Order No. 693 at P 964).

[36] WIRAB at 8–9 (*citing* NERC Request, Appendix B at 4–5).

[37] California Cogeneration Comments at 6 (*citing California Independent System Operator Corp.*, 96 FERC ¶ 63,015 (2001)).

Standards to NERC. Xcel asserts that the WECC Reliability Standards development process used to develop these eight regional Reliability Standards would be invalid to the extent that the Commission directs changes to that process. Xcel contends that NERC, in eliminating the one-year interim status of the regional Reliability Standards, has effectively approved the regional Reliability Standards on a permanent instead of interim basis. Further, Xcel raises substantive objections that are discussed below in the context of the relevant regional Reliability Standard.

II. Discussion

A. Procedural Matters

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant PG&E's late motion to intervene, given the early stage of this proceeding and the absence of undue delay, prejudice or burden to the parties.

B. General and Procedural Objections to the Regional Reliability Standards

1. WECC Reliability Standards Development Process

28. As discussed above, Xcel argues that the Commission only has the authority to consider Reliability Standards proposed by the ERO or a Regional Entity. On April 19, 2007, subsequent to Xcel's protest, the Commission accepted the proposed Regional Delegation Agreements, and accepted WECC as a Regional Entity organized on an Interconnection-wide basis.[38] Thus, we consider this objection by Xcel to be moot.

29. Xcel also contends that ''to the extent the Commission directs changes to WECC's standards development process that differ from the process used to develop these WECC Standards, those standards will have been developed pursuant to processes that were inconsistent with WECC's own rules.'' [39] The Commission, in the *April 19 Order,* accepted WECC's Standards Development Manual,[40] and WECC's eight proposed regional Reliability Standards were developed using the process set forth in this manual. The Commission also directed WECC to develop several changes to the manual.[41] However, the record of WECC's development of the proposed regional Reliability Standards indicates that Xcel had full opportunity to participate and raise its concerns in the (what is now a Commission-approved) stakeholders process, as well in the NERC posting of the WECC regional Reliability Standards for comment.[42] Accordingly, we deny Xcel's protest on this issue.

2. Term Limitation

30. As discussed above, WECC had proposed that the regional Reliability Standards would be interim standards that would remain in effect for a maximum of one year after Commission approval. Specifically, each regional Reliability Standard includes a statement that it will remain in effect ''for one year from the date of Commission approval or until a North American Standard or a revised [WECC] Regional Reliability Standard goes into place, whichever occurs first.'' During the interim, WECC would develop permanent standards that, upon Commission approval, would replace the interim standards.

31. NERC, however, accepted the regional Reliability Standards on the condition that ''the standards shall remain mandatory and enforceable until they are revised, replaced or withdrawn in a subsequent standards action, including approval of the revision, replacement, or withdrawal by the Commission.'' [43] NERC explained that it imposed this condition to be consistent with a Commission order which provided that, with regard to a similar provision in NERC's standards development procedure, once a Reliability Standard is made effective under section 215 of the FPA, it can only be revised, replaced or withdrawn by a further action that requires Commission approval.

32. WECC, WIRAB and Xcel object to NERC's elimination of the one-year expiration date. WECC and WIRAB state that the entities that voted in favor of the regional Reliability Standards did so with the understanding that they were voting for temporary standards, not standards that would continue indefinitely until replaced.[44] WIRAB states that, while it agrees with the policy that urgent action standards should not have sunset dates, it is concerned that imposing the rule with respect to the eight WECC regional Reliability Standards will abridge the due process of WECC members that approved them. Likewise, Xcel remarks that WECC postponed substantive responses to stakeholders' comments based on the rationale that it was proposing the standards on an interim basis.

33. We affirm NERC's decision to eliminate the one-year term limitation. NERC's decision is consistent with our precedent. In the *ERO Certification Order*, the Commission directed NERC to establish a process for adopting an interim Reliability Standard on an expedited basis, where the standard might be adopted later on a permanent basis, without any possibility that the interim standard would expire in the interim.[45] NERC subsequently revised its ''urgent action'' procedures to remove the automatic one year expiration provision. In accepting this revision, the Commission explained that ''It is sufficient * * * to allow the interim Reliability Standard to remain in effect until it is made permanent or replaced by a permanent Reliability Standard, or possibly even its withdrawal as a Reliability Standard so long as it is understood that these actions are all subject to Commission approval.'' [46] WECC developed the eight regional Reliability Standards pursuant to its Expedited Process for Urgent Action Interim Standards (Expedited Process).[47] Thus, our concerns regarding NERC's urgent action procedures apply equally to WECC's Expedited Process.

34. The commenters, however, are mistaken that the elimination of the one-year expiration date necessarily converts these from interim to permanent regional Reliability Standards. WECC is still committed pursuant to its Expedited Process to completing the development of permanent replacement standards.[48] Moreover, as another condition of approval, NERC required WECC to ''meet its commitment to address the shortcomings identified in the standards * * * over the course of the next year.'' [49] Thus, we disagree with the commenters that NERC, in eliminating the one-year expiration date, has made the regional Reliability Standards permanent or thwarted due process. NERC's decision will assure that, if WECC is unable to develop permanent, replacement regional Reliability

[38] *April 19 Order* at P 432.

[39] Xcel Comments at 8.

[40] *April 19 Order* at P 469.

[41] *Id.* at P 470.

[42] *See, e.g.*, Ex. C at Attachment 2 at 5, Attachment 4 at 23–27.

[43] NERC Filing at 10–11. *See also id.* at Ex. B at 6–7 (March 12, 2007, NERC Board of Trustees Decision on WECC Reliability Standards).

[44] *See* WECC Comments at 7.

[45] *ERO Certification Order*, 116 FERC ¶ 61,062 at P 253.

[46] *North American Electric Reliability Corp.*, 118 FERC ¶ 61,030 at P 30 (2007).

[47] WECC Comments at 5.

[48] *Id.* WECC represents that it expects to complete permanent, replacement standards within one year for most of the interim standards. *See id.* at 7.

[49] NERC Filing, Ex. B at 7.

Standards within one year, the interim standards that WECC represents are crucial for reliability within the Western Interconnection will not automatically expire.

3. NERC's Application of the Rebuttable Presumption

35. Section 215(d)(3) of the FPA provides that, when a Reliability Standard is submitted to the ERO by an Interconnection-wide Regional Entity, the ERO must rebuttably presume that the standard meets statutory criteria for approval.[50] In Order No. 672, the Commission explained that the rebuttable presumption refers to the burden of proof before the ERO.[51] Thus, a party that objects to a proposed Reliability Standard before the ERO must demonstrate that it does not meet criteria for approval. If the ERO finds that the presumption is not adequately rebutted, it must accept the proposed Reliability Standard from a Regional Entity organized on an Interconnection-wide basis.[52]

36. Here, NERC correctly applied the rebuttable presumption to WECC as a Regional Entity organized on an Interconnection-wide basis. However, the NERC Board found that ''[b]ecause each of the proposed standards contains a sanctions table that is inconsistent with the NERC Sanctions Guidelines, the proposed standards have lost the rebuttable presumption that such standards would otherwise have.'' [53] NERC then approved the proposed regional Reliability Standards with the condition that WECC conform the sanctions table to NERC's Sanction Guidelines and that, in the interim, WECC follow the NERC guidelines to the maximum extent possible.

37. WIRAB disagrees with the manner in which NERC dismissed the statutory presumption. It asserts that NERC failed to provide an adequate analysis regarding the reasonableness, potential discriminatory impacts, or the broader public interest at stake to support a finding that rebuts the presumption.

38. In the first instance, WIRAB's concern is only hypothetical since NERC, after determining that the rebuttable presumption should not apply, determined that the regional Reliability Standards met the statutory criteria for approval. Moreover, it appears that WIRAB interprets NERC as having completely disregarded the rebuttable presumption. The Commission believes that the better understanding, supported by NERC's filing, is that NERC determined that the rebuttable presumption was overcome ''with respect to this component of the proposed standards,'' *i.e.*, the sanctions table.[54] NERC supported this determination by explaining that NERC staff and industry stakeholders identified a number of shortcomings, the most significant of which is the sanction table that is inconsistent with the NERC Sanction Guidelines.[55] Although NERC's explanation is succinct, the Commission concludes that NERC has articulated a sufficient rationale for finding that the rebuttable presumption with regard to this one component was overcome. In general, however, NERC should provide a robust discussion of its reasoning for finding that the rebuttable presumption has been overcome.

4. Potential for Dual Penalties

39. Xcel protests that the proposed WECC regional Reliability Standards impose an unfair burden because, according to Xcel, the proposed standards are duplicative of Commission-approved NERC Reliability Standards. Thus, Xcel contends that the regional Reliability Standards present the risk of dual penalties for the same offense.

40. We reject Xcel's protest on this issue. Each of the proposed regional Reliability Standards provides that ''[a]t no time shall this regional Standard be enforced in addition to a similar North American Standard.'' [56] WECC, in its comments, makes clear that the intent of this language is to ensure that there would not be dual sanctions for the same offense.[57] Thus, we conclude that the regional Reliability Standards will not result in duplicative penalties resulting from the same non-compliance event.

5. Need for the Proposed Standards

41. In reviewing a proposed Reliability Standard, we consider, in relevant part, whether it would address a reliability goal.[58] Here, WECC, WIRAB and NERC each represent that the proposed regional Reliability Standards would enhance regional reliability by making binding, throughout the United States portion of the Western Interconnection, reliability practices that are currently implemented in the Western Interconnection on a voluntary basis. As noted above, those practices are currently legally binding only on signatories to the RMS Agreement. WECC and NERC explain that Commission approval would extend the compliance obligations of the regional Reliability Standards beyond the RMS signatories to all applicable users, owners and operators in the Western Interconnection. According to NERC, having the regional Reliability Standards approved as mandatory under section 215 of the FPA provides significant additional authority for compliance and enforcement.

42. Xcel, on the other hand, asserts that the proposed standards are unnecessary, reasoning that the RMS Agreement will remain in effect and is sufficient to protect reliability.

43. We agree with WECC, WIRAB and NERC that approval of the proposed regional Reliability Standards under section 215 would enhance reliability in the Western Interconnection by making WECC's current practices binding on all relevant entities in the region and by strengthening WECC's compliance and enforcement authority. WECC's current practices were developed in response to concrete and significant reliability problems in the Western Interconnection in the mid-1990s. According to WECC, reliability in the region has improved since the practices have been in effect. When we first approved the practices in 1999, we lacked full jurisdiction over reliability and therefore could not impose the practices on a mandatory basis. While we laud WECC members for their voluntary compliance by contract, we believe that statutorily-based and mandatory Reliability Standards will better ensure the reliability of the Bulk-Power System.

C. Discussion of WECC's Regional Reliability Standards

1. WECC–BAL–STD–002–0 (Operating Reserves)

44. Regional Reliability Standard WECC–BAL–STD–002–0 requires that adequate generating capacity be available at all times to maintain scheduled frequency and avoid loss of firm load following transmission or generation contingencies. The regional Reliability Standard applies to balancing authorities and reserve sharing groups (RSGs) with provision for agents to provide administrative duties. A balancing authority or reserve sharing group must maintain minimum operating reserves, defined as the sum of: (1) Regulating reserves; (2) contingency reserves; (3) additional reserve for interruptible imports; and (4) additional reserve for on-demand

[50] 16 U.S.C. 842o(d)(3); 18 CFR 39.5(b).

[51] Order No. 672 at P 301.

[52] *Id.*

[53] NERC Filing, Ex. B at 4–5.

[54] *Id.* at 9.

[55] *Id.* at 10.

[56] *See, e.g.*, WECC–BAL–STD–002–0 § A5.

[57] *See* WECC Comments at 2, n.1.

[58] Order No. 672 at P 324.

obligations. WECC requires balancing authorities to maintain an amount of contingency reserves:

> Sufficient to meet the NERC Disturbance Control Standard BAL–002–0, equal to the greater of: (a) The loss of generating capacity due to forced outages of generation or transmission equipment that would result from the most severe single contingency; or (b) The sum of five percent of the load responsibility served by hydro generation and seven percent of the load responsibility served by thermal generation.

Further, the contingency reserve must be composed of at least 50 percent spinning reserves, which must be capable of ramping and being fully deployed within ten minutes.

45. WECC's regional Reliability Standard corresponds to NERC's Reliability Standard BAL–002–0 (Disturbance Control Performance), which requires a balancing authority (either directly or by participating in a reserve sharing group) to use its contingency reserves to balance resources and demand and return Interconnection frequency to within defined limits following a reportable disturbance. Requirement 3 of NERC's BAL–002–0 requires each balancing authority or reserve sharing group to ''carry at least enough Contingency Reserve to cover the most severe contingency.''

46. As with all eight regional Reliability Standards, NERC approved WECC–BAL–STD–002–0 with the condition that WECC meet its commitment to address the shortcomings identified by NERC in a January 9, 2007 letter to WECC.[59] With regard to WECC–BAL–STD–002–0, NERC identified various formatting concerns including the need to specify individual Requirements and corresponding Measures, consistent with the format of the NERC Reliability Standards. NERC also stated that WECC's regional Reliability Standard defines the terms ''automatic generation control,'' ''disturbance,'' ''frequency bias,'' and ''non-spinning reserve'' differently from NERC's Glossary of Terms Used in Reliability Standards (NERC glossary).[60] NERC also identifies a number of shortcomings that apply generally to all of the WECC regional Reliability Standards including the sanction tables that conflict with the NERC Sanction Guidelines, failure to include Violation Severity Levels (levels of non-compliance) and Violation Risk Factors, an ''excuse of performance'' provision[61] that is not included in NERC's Reliability Standards template, and additional substantive and formatting concerns.

Comments

47. WECC explains that NERC Reliability Standard BAL–002–0 requires an applicable entity to have the ability to supply reserves equal to the most severe single contingency. According to WECC, while applicable users, owners and operators in the Western Interconnection must comply with BAL–002–0, the corresponding regional Reliability Standard goes further and requires each balancing authority in the West to provide a minimum reserve of five percent of the loads served by hydro generation and seven percent of the loads served by thermal generation. WECC states that this regional minimum reserve requirement was developed to assure that there would be sufficient generation to sustain acceptable power system performance for various contingencies. Further, WECC explains that WECC–BAL–STD–002–0 is more stringent because NERC's BAL–002–0 requires contingency reserves to be restored within 90 minutes following a disturbance while WECC requires restoration within 60 minutes.

48. As noted above, WECC requires balancing authorities to maintain contingency reserves equal to the greater of the loss of generating capacity resulting from the most severe single contingency or the sum of five percent of load responsibility served by hydro generation and seven percent of the load responsibility served by thermal generation. Both Xcel and California Cogeneration protest that the term ''load responsibility'' as used by the WECC is ambiguous and could lead to inconsistent interpretations of the regional Reliability Standard. California Cogeneration states that Commission Opinion No. 464 determined that a qualifying facility's (QF) net load is the only relevant load for the purposes of calculating the operating reserve responsibility of the QF.[62] It expresses concern that the term load responsibility could be interpreted to include gross load in conflict with Opinion No. 464 and, thus, asks the Commission to remand the regional Reliability Standard so that it can be modified to include a definition of load responsibility consistent with Opinion No. 464.

49. Xcel also argues that the term load responsibility is overly vague. It quotes a WECC document that defines load responsibility as ''[a] control area's firm load demand plus those firm sales minus those firm purchases for which reserve capacity is provided by the supplier.''[63] According to Xcel, WECC has not adequately defined the term ''firm'' embedded in its definition of load responsibility and, likewise, has not adequately defined the related term ''interruptible.''

50. Xcel notes that WECC–BAL–STD–002–0 requires the purchaser of interruptible power to carry additional reserves to replace interruptible imports. Xcel posits that, while the definition of ''interruptible'' is unclear, application of a narrow interpretation of the term could have adverse impacts on competition and reliability. Specifically, it claims that to avoid application of the ''adder'' some entities avoid purchasing ''economy power,'' or interruptible power, thereby impeding competition. Xcel also claims that this practice may result in entities utilizing local units that are subject to failure or curtailment, resulting in less reliable operations. Xcel further argues that certain entities may try to claim that most ''firm'' transactions, as interpreted by the Commission in Order No. 890, are potentially curtailable and thus ''interruptible'' under a ''very narrow interpretation.'' Xcel adds that there is no evidence to show that ''economy transactions'' are less reliable thus warranting the need for extra reserves.

51. Xcel also opposes the 60-minute restoration period that would be required under BAL–STD–002–0. Xcel asserts that BAL–STD–002–0 would require restoration of contingency reserves within 60 minutes rather than the 90 minutes permissible under the corresponding NERC standard. According to Xcel, in adopting 60 minutes of restoration time, WECC and NERC disregarded Requirement R6.2 of BAL–002–0 that established a default contingency reserve restoration period of 90 minutes and allows adjustment of

[59] *See* NERC Filing, Ex. C, Attachment 3 at 5–7.

[60] In Order No. 693 at P 1893–98, the Commission approved NERC's glossary and directed certain modifications.

[61] Each proposed regional Reliability Standard includes an ''excuse of performance'' provision stating that ''non-compliance with any of the reliability criteria contained in this Standard shall be excused and no sanction applied if such non-compliance results directly from one or more of the [specified] actions or events,'' including governmental order, order of reliability coordinator, protection of facilities and extraordinary contingency (such as act of war, insurrection, flood or earthquake).

[62] *Citing California Independent System Operator Corp.,* Opinion No. 464, 104 FERC ¶ 61,196 at P 40 (2003).

[63] Xcel Comments at 12, *citing* NERC/WECC Planning Standards and Minimum Operating Reliability Criteria, Definitions, Revised August 9, 2002. The California Independent System Operator Corporation tariff also uses this definition of load responsibility. *See* Opinion No. 464, 96 FERC ¶ 63,015 at 13.

this period ''to better suit the reliability targets of the Interconnection based on analysis approved by the NERC Operating Committee.'' Xcel contends that WECC failed to obtain approval of the NERC Operating Committee. Xcel also claims that WECC's proposed 60-minute restoration period will have a dampening effect on competition because the shortened restoration period will provide little time for market participants to procure alternative resources outside of the host balancing authority.

52. Further, Xcel argues that WECC has not justified the requirements of the regional Reliability Standard and thus the technical expertise of WECC should not be given any weight in the Commission's evaluation of the regional Reliability Standard.

Commission Determination

53. The Commission approves regional Reliability Standard WECC–BAL–STD–002–0 as mandatory and enforceable in the Western Interconnection. The Commission finds that the proposed regional Reliability Standard is more stringent than the corresponding NERC Reliability Standard, BAL–002–0, because WECC requires a more stringent minimum reserve requirement than the nation-wide requirement.[64] Further, WECC's requirement to restore contingency reserves within 60 minutes is more stringent than the 90 minute restoration period set forth in NERC's BAL–002–0. While we agree with Xcel that NERC's filing did not adequately explain the need for WECC–BAL–STD–002–0 or why it was more stringent than the corresponding NERC Reliability Standards, WECC provides an adequate explanation in its comments for the Commission to make a reasoned determination.[65]

54. The Commission agrees with the shortcomings identified by NERC regarding WECC–BAL–STD–002–0 and expects WECC in developing a permanent, replacement standard to address these shortcomings as it has committed to do. For example, for each of the proposed regional Reliability Standards, (1) Regional definitions should conform to the definitions set forth in the NERC glossary, unless a specific deviation has been justified; and (2) documents that are referenced in the Reliability Standard should be attached to the Reliability Standard. Likewise, with respect to this and each of the proposed regional Reliability Standards, we agree with NERC that WECC must remove the sanctions table that is inconsistent with NERC's Sanction Guidelines and develop Violation Risk Factors (levels of non-compliance) and Violation Severity Levels that conform to corresponding NERC standards. In approving NERC's Sanction Guidelines, the Commission emphasized the need to achieve consistency in the assessment of penalties across the regions. Elimination of the WECC sanctions table will further this goal.[66]

55. Further, it is important that regional Reliability Standards and NERC Reliability Standards achieve a reasonable level of consistency in the structure of a Reliability Standard so that there is a common understanding of the elements. In particular, we agree with NERC that WECC should eliminate the ''excuse of performance'' provision of the regional Reliability Standards, which is inconsistent with NERC's format. While the factors identified in the excuse of performance provision may be legitimate mitigating factors for WECC to consider when assessing a penalty on a case-by-case basis, the Commission disagrees that a Reliability Standard should contain a blanket waiver or excuse for non-compliance.[67] We expect WECC, in developing a permanent, replacement standard, to address these concerns of both NERC and the Commission. In general, with respect to both the eight proposed Reliability Standards as well as other standards that are being developed by WECC, it is essential that WECC employ a higher level of precision and consistency.

56. In Order No. 672, the Commission, in discussing the factors it would consider in determining whether a proposed Reliability Standard met the statutory standard for approval, explained that a proposed Reliability Standard should be clear and unambiguous regarding what is required and who is required to comply.[68] Xcel and California Cogeneration contend that the Commission should remand WECC–BAL–STD–002–0 because of ambiguities in the terms ''load responsibility'' and ''firm transaction.'' As discussed above, the Commission believes that the regional Reliability Standard is sound, as it provides greater stringency than NERC's reserve requirements and meets a need of the Western Interconnection. While commenters identify potential ambiguities, we do not believe that these potential uncertainties demonstrate a degree of ambiguity within the regional Reliability Standard that requires us to remand it.[69] Rather, as WECC indicated in its response to stakeholders in the regional Reliability Standards development process, WECC will provide an opportunity to address these concerns when developing a permanent, replacement standard. The Commission agrees that this is a reasonable approach and will expect WECC's submission of a replacement standard to adequately address these stakeholder concerns.

57. California Cogeneration raised concerns that the term load responsibility must be defined consistent with the Commission's Opinion No. 464, which issued in a proceeding under section 205 of the FPA that addressed treatment of QFs under the CAISO open access transmission tariff. The Commission agrees that a QF's load responsibility should be interpreted consistent with Opinion No. 464, which provided in relevant part that:

> We affirm the judge's finding that the long-standing practice in the CAISO control area of scheduling, metering and procuring reserves on a net load basis should be permitted to continue, so long as a QF has contracted for standby service with a UDC [Utility Distribution Company], *i.e.*, a contract that provides for the immediate replacement of energy in case of the QF's forced outage. The record indicates * * * that by contract with a QF, a UDC will provide standby service and operating reserves if there is a forced QF outage.[70]

58. Thus, from an economic perspective under section 205, the UDC must pay for the reserves associated with the backup power provided by the UDC by contract. While operating reserves may be required for behind the

[64] While approving the WECC regional Reliability Standard, the Commission reiterates its directive in Order No. 693 that the ERO develop a continent-wide reserve policy that is ''based on the reliability risk of not meeting load associated with a particular balancing authority's generation mix and topology.'' See Order No. 693 at P 340. Our approval of WECC–BAL–STD–002–0 does not affect this directive to the ERO.

[65] Section 39.5(a) of the Commission's regulations, 18 CFR 39.5(a) (2006), provides that the ERO's submission of a new or modified Reliability Standard must include (1) A concise statement of the basis and purpose of the proposed Reliability Standard, (2) a summary of the Reliability Standard development proceedings, and (3) a demonstration that the proposal is just, reasonable, not unduly discriminatory or preferential, and in the public interest. Future Reliability Standard filings may be subject to a deficiency letter if they fail to satisfy the filing requirements set forth in our regulations.

[66] *ERO Certification Order* at P 254, 350.

[67] *April 19 Order* at P 133.

[68] Order No. 672 at P 325.

[69] The Commission notes that WECC has defined the term load responsibility, although not in its regional Reliability Standard. The definition can be found at WECC's Web site at: *http://wecc.biz/documents/library/procedures/WECC_Reliability_Criteria_definitions_8-02.pdf.*

[70] Opinion No. 464, 104 FERC ¶ 61,196 at P 40.

meter load in a Regional Reliability Standard for reliability reasons, a QF is not required to buy operating reserve for the load that has standby service. It remains the responsibility of the host utility that provides the QF's normal stand-by or back-up power to supply those reserves. We believe this explanation addresses California Cogeneration's concern.

59. In regard to Xcel's concern about the definition of interruptible imports, while it is possible that the term may require refinement by WECC to address specific contexts, the meaning of the term ''interruptible'' is generally well understood in the industry, *i.e.*, transmission or generation subject to interruption at the provider's discretion. Xcel's claims that the provision, under a narrow interpretation, could have adverse impacts on competition and reliability are highly speculative.

60. The Commission rejects Xcel's protest regarding the 60-minute contingency reserve restoration period. This is useful stringency that benefits reliability in the Western Interconnection by shortening the time after a disturbance that the balancing authority might not have sufficient reserves to meet its reliable obligations in the Interconnection. Xcel's concern that this provision harms competition is speculative. Moreover, the Commission notes that NERC Reliability Standard EOP–001, Requirement R1 requires entities to have pre-existing arrangements. Balancing authorities should not use the reserve restoration period to shop for better prices but to be concerned about restoring the reserves so the Bulk-Power System remains reliable.

61. Finally, while Xcel may be technically correct that the current NERC BAL–002–2 requires approval of the NERC Operating Committee to change the restoration period, we do not believe this is a sufficient reason to remand WECC's proposal. First, in Order No. 693, the Commission directed NERC to modify this Requirement to replace ''NERC Operating Committee'' with ''ERO.''[71] NERC board approval of WECC–BAL–STD–002–0 suffices. Second, WECC did not increase but, rather, decreased the restoration period, making the WECC standard include a more stringent requirement than NERC's comparable requirement.

2. WECC–IRO–STD–006–0 (Qualified Path Unscheduled Flow Relief)

62. Regional Reliability Standard WECC–IRO–STD–006–0 applies to transmission operators, balancing authorities, and load serving entities within the Western Interconnection. Under WECC's plan for congestion management, responsible entities must comply with requests from operators of qualified transmission paths to reduce unscheduled flow on the path. The regional Reliability Standard identifies when an operator shall request curtailments, states that responsible entities shall comply in a timely manner with a request for curtailments, and establishes procedures for reducing flows. In particular, it requires that:

> Upon receipt of a curtailment request, Contributing Schedules which are subject to curtailments will be reduced (or equivalent alternative schedule adjustments will be effected) in accordance with the following procedures:
>
> (i) Receivers of Contributing Schedules will initiate the requested schedule reductions * * *.[72]

63. NERC's Reliability Standard IRO–006–3 (Transmission Loading Relief), which the Commission approved in Order No. 693 subject to certain modifications,[73] requires a reliability coordinator experiencing potential or actual System Operating Limit (SOL) or Interconnection Reliability Operating Limit (IROL) violations to take appropriate actions pursuant to established procedures to relieve transmission loading. For the Eastern Interconnection, balancing authorities must follow the established transmission loading relief (TLR) procedures to take appropriate actions pursuant to established procedures to relieve transmission loading. Requirement R2.2 of IRO–006–3 identifies ''the equivalent Interconnection-wide transmission loading relief procedure for use in the Western Interconnection is the 'WSCC Unscheduled Flow Mitigation Plan.' ''

64. NERC approved WECC–IRO–STD–006–0 on the condition that WECC meet its commitment to address specified shortcomings concerning formatting, use of standard terms, and the need for greater specificity in the actions that a responsible entity must take. In addition, NERC noted that the requirements should be part of the regional Reliability Standard rather than being embedded in a filing.

Comments

65. According to WECC, WECC-IRO-STD–006–0 is essential because it is the only source of a mandatory process for mitigating overloads due to unscheduled line flows in the Western Interconnection. WECC notes that, in developing the regional Reliability Standard, stakeholders commented that the term ''receiver'' as defined in the standard should more closely match the NERC Functional Model and should not include market entities. WECC states that it intends to address these issues in developing a permanent, replacement standard.[74]

66. PPL protests the applicability of WECC–IRO–STD–006–0, noting that NERC Reliability Standard IRO–006–3 applies to reliability coordinators, transmission operators and balancing authorities. PPL contends that WECC has, without explanation, significantly broadened the scope of the regional Reliability Standard by requiring compliance by LSEs. According to PPL, market entities such as LSEs may be unable to meet the requirements of WECC–IRO–STD–006–0. Second, PPL protests that certain requirements apply to ''receivers,'' which are not identified in the applicability section of the regional Reliability Standard. PPL contends that receivers (1) May lack the authority or ability to comply with a directive to reduce flows and (2) may include functional entities beyond LSEs such as ''purchasing selling entities'' that are not identified in the applicability section of the regional Reliability Standard.

67. PPL recommends that the Commission limit applicability to those entities identified in NERC Reliability Standard IRO–006–3 and clarify that the assessment of penalties is limited to the entities to which the regional Reliability Standard is applicable. PPL asks that, if the Commission decides that it is appropriate to include load-serving entities, the applicability should be limited to LSEs as defined by NERC[75] and to LSEs that meet NERC's compliance registry criteria.

68. Xcel protests that no justification has been provided for the WECC regional Reliability Standard. Xcel recognizes that one benefit of the WECC unscheduled flow mitigation procedures is the coordinated use of phase shifters to provide some relief on an overburdened transmission path without the economic impact of schedule curtailments. Xcel suggests that, as an alternative, the WECC procedures could be modeled after the

[71] Order No. 693 at P 356.

[72] WECC–IRO–STD–006–0, Requirement WR1, Plan Attachment 1, Section 9.h.

[73] Order No. 693 at P 960–64.

[74] *See* WECC Comments at 10.

[75] PPL at 10. *See* August 2, 2006, NERC Glossary of Terms Used in Reliability Standards at 10, which defines load-serving entity as an entity that ''secures energy and transmission service (and related Interconnected Operations Services) to serve the electric demand and energy requirements of its end-use customers.''

TLR procedures, while retaining this initial step.

Commission Determination

69. We approve WECC–IRO–STD–006–0 as mandatory and enforceable for the Western Interconnection. The regional Reliability Standard provides that practices under WECC's Unscheduled Flow Mitigation Plan—including directions thereunder to reduce flows—are enforceable against all Transmission Operators, Balancing Authorities and Load-Serving Entities in the Western Interconnection. In Order No. 693, we found that the WECC's Unscheduled Flow Mitigation Plan (which relies on phase angle regulators, series capacitors and back-to-back DC lines to mitigate contingencies without curtailing transactions) is superior to the national Reliability Standard.[76] Accordingly, the Commission finds that WECC–IRO–STD–006–0 is adequately justified. In developing a permanent, replacement regional Reliability Standard, WECC may consider Xcel's suggestion to model the WECC procedures after the TLR procedures, however, we will not mandate such an approach.

70. The Commission shares PPL's concern that, while the applicability of the regional Reliability Standard identifies LSEs, the requirements refer to receivers. As indicated by PPL, the term ''receiver'' may refer to LSEs as well as other market participants. While WECC states that WECC–IRO–STD–006 is an exact translation of existing WECC RMS criteria, an entity cannot be subject to a compliance action if it has not been clearly identified in the applicability section of the Reliability Standard.[77] Thus, in approving the regional Reliability Standard, we expect a continuation of the existing practices for transmission line relief in the Western Interconnection. However, an entity that is not clearly identified in the applicability provision of a regional Reliability Standard may not be subject to penalties for non-compliance. Moreover, pursuant to section 215(d)(5) of the FPA and section 39.5(f) of the Commission's regulations,[78] we direct that WECC in developing a permanent, replacement Reliability Standard, clarify the term ''receiver'' and the applicability of the standard.

71. We also share PPL's concerns regarding the identification of LSEs as applicable entities. While the expansion of the WECC regional Reliability Standard beyond the applicability of the corresponding NERC Reliability Standard is not in itself problematic, we are concerned regarding PPL's contention that LSEs may not be able to meet the Requirements of the regional Reliability Standard. While we are approving WECC–IRO–STD–006 as mandatory and enforceable, we direct WECC to address PPL's concerns in developing a permanent, replacement regional Reliability Standard.

72. We also expect that WECC, in developing a permanent, replacement regional Reliability Standard, will address the shortcomings identified by NERC.

3. WECC–PRC–STD–001–1 (Certification of Protective Relay Applications and Settings)

73. Regional Reliability Standard WECC–PRC–STD–001–1 applies to transmission operators or transmission owners of 40 specified transmission paths.[79] The regional Reliability Standard requires these entities to certify to WECC that all (1) Protective relay applications and (2) protective relay settings and logic are appropriate for the specified transmission paths. It also requires these entities to certify that ''relay operations since the last certification or during the last three-year period have been analyzed for correctness and appropriate corrective action taken. * * *''

74. NERC Reliability Standard PRC–001–1 (System Protection Coordination), which addresses protection systems, requires transmission operators and generator operators to notify appropriate entities of relay or equipment failures and to coordinate when installing new or modified protection systems.[80]

75. NERC approved WECC–PRC–STD–001–1 with the condition that WECC meet its commitment to address the shortcomings identified by NERC in a January 9, 2007 letter to WECC, including several formatting concerns.

Comments

76. WECC states that applicable users, owners and operators in the Western Interconnection must comply with the Requirements of the corresponding NERC Reliability Standard. The WECC regional Reliability Standard requires, in addition, that transmission owners and transmission operators analyze and certify *all* relay settings and operations on specified paths to determine whether operations were correct, and that current information on relays is provided to the transmission operators. WECC explains that these requirements were developed to address root causes of a July 1996 system disturbance in which undesirable relay operations due to incorrect settings and undetected relay problems resulted in cascading outages in the Western Interconnection.

77. Xcel argues that no justification for WECC's certification requirement has been provided. According to Xcel, regional differences are intended to provide reliability protection in situations where physical differences in the Bulk-Power System justify additional stringency. It claims that WECC–PRC–STD–001–1 appears to be driven by a desire for an attestation, not an actual physical difference in the Western Interconnection and that, to the extent the attestation is needed, it is appropriate for the NERC Reliability Standards rather than a regional difference. Xcel further argues that the proposed regional Reliability Standard does not create any additional reliability benefit but, rather, needlessly compounds the requirements of the NERC Reliability Standards.

Commission Determination

78. The Commission approves WECC–PRC–STD–001–1 as mandatory and enforceable in the Western Interconnection. The Commission expects WECC, in developing replacement standards, to address the shortcomings identified by NERC.

79. The Commission disagrees with Xcel's contentions that the need for the regional Reliability Standard has not been justified and that it does not create any additional reliability benefits. While the NERC filing did not elaborate on the reliability benefit of WECC–PRC–STD–001–1, WECC explains that it goes beyond the related NERC Reliability Standard by requiring certification that all relay settings and operations on specified transmission paths are appropriate for the Bulk-Power System. The certification requirement provides an additional level of assurance that protection systems will operate as they should to provide for Bulk-Power System reliability. It is appropriate to give due weight to WECC's technical expertise in its representation that the requirements of this regional Reliability Standard will address the problems identified as a root cause of prior

[76] *See* Order No. 693 at P 964.

[77] *See* Order No. 693 at P 39 (each Reliability Standard must clearly identify the subset of users, owners and operators of the Bulk-Power System to which the Reliability Standard applies).

[78] 18 CFR 39.5(f) (2006).

[79] Some of the specified transmission paths are located completely or partially outside the United States. The Commission addresses the regional Reliability Standard only as it applies to those paths or portions of paths that are within the United States.

[80] In Order No. 693, at P 1433–49, the Commission approved NERC Reliability Standard PRC–001–1 and, as a separate action, directed NERC to develop certain modifications to the standard.

cascading outages in the Western Interconnection.[81]

80. Further, Xcel incorrectly characterizes the Commission's previous statements regarding when a regional difference may be justified. The Commission has identified two types of regional differences that it will accept, provided they otherwise satisfy the statutory requirements for approval: (1) A regional difference that is more stringent than the continent-wide Reliability Standard, including a regional difference that addresses matters that the continent-wide Reliability Standard does not; and (2) a regional Reliability Standard that is necessitated by a physical difference in the Bulk-Power System.[82] Xcel incorrectly combines the two appropriate types of regional differences as a single standard category where a regional difference sets forth a stringency needed to address a physical difference in the Bulk-Power System. Thus, we reject Xcel's argument that WECC–PRC–STD–001–1 should not be approved because it is not based on an actual physical difference in the Western Interconnection.

4. WECC–PRC–STD–003–1 (Protective Relay and Remedial Action Scheme Misoperation)

81. Regional Reliability Standard WECC–PRC–STD–003–1 has the purpose of ensuring that protection system misoperations are analyzed and mitigated.[83] This regional Reliability Standard applies to the owners and operators of 40 specific transmission paths that are identified in Attachment A of the standard. The regional Reliability Standard requires the removal and repair of protection systems after a misoperation within specified time frames.

82. The WECC regional Reliability Standard corresponds to NERC's Reliability Standard PRC–003–1, which also relates to protective system misoperations.[84] Requirement 1 of NERC's PRC–003–1 provides that each regional reliability organization, *i.e.*, Regional Entity, must establish procedures for review, analysis, reporting and mitigation of protection system misoperations. WECC–PRC–STD–003–1 states that it meets Requirement 1 of NERC Reliability Standard PRC–003–1.

83. As with all eight regional Reliability Standards, NERC approved WECC–PRC–STD–003–1 with the condition that WECC meet its commitment to address the shortcomings identified by NERC in a January 9, 2007 letter to WECC. With regard to WECC–PRC–STD–003–1, NERC noted, *inter alia,* that the WECC definition of ''disturbance'' is not identical to the NERC glossary definition. It also identified a WECC Measure that refers to the filing of a form for reporting misoperations, without a corresponding requirement.

Comments

84. In its comments, WECC explains that the corresponding NERC Reliability Standard PRC–003–1 requires the analysis of misoperations within 90 days and the submission of corrective action plans. WECC states that the applicable users, owners and operators of the Bulk–Power System in the West must comply with the requirement of NERC's PRC–003–1. In addition, the WECC regional Reliability Standard goes further and requires the applicable entities in the West: (1) To remove equipment that has misoperated within 22 hours; and (2) to repair or replace equipment that has misoperated within 20 business days for the specific transmission paths identified in the WECC regional Reliability Standard. WECC explains that these requirements were developed as a result of a 345 kV line relay misoperation in July 1996 when virtually the same outage occurred the next day because the faulty equipment had not been isolated.

85. Xcel points out that, in Order No. 693, the Commission stated that it would neither approve nor remand NERC Reliability Standard PRC–003–1 until NERC submits additional information regarding regional procedures on misoperations.[85] The Commission also directed NERC to consider whether greater consistency can be achieved as NERC modifies PRC–003–1 to provide the missing information. Xcel asserts that Commission approval of WECC–PRC–STD–003–1 would allow WECC to side-step the process directed by the Commission to achieve greater uniformity with regard to NERC's PRC–003–1.[86] Xcel also contends that WECC has not explained the physical differences in the Western Interconnection necessitating the regional difference and, thus, WECC's technical expertise should be given no weight in evaluating the WECC regional Reliability Standard.

Commission Determination

86. The Commission approves WECC–PRC–STD–003–1 as mandatory and enforceable in the Western Interconnection. The Commission agrees with WECC that the proposed regional Reliability Standard goes beyond the corresponding NERC standards because no current NERC Reliability Standard includes the equipment removal and repair requirements set forth in this regional Reliability Standard. Moreover, while we agree with Xcel that NERC's filing did not adequately explain the need for WECC–PRC–STD–003–1 or why it is more stringent than the corresponding NERC Reliability Standards, WECC has provided an adequate explanation in its comments, as discussed above.

87. We note that upon failure of protective relays, NERC Reliability Standard PRC–001–1 requires transmission operators and generator operators to take corrective actions as soon as possible (within thirty minutes as directed by Order No. 693).[87] Order No. 693 clarifies that ''corrective actions'' do not refer to the repair of protective relays, but instead to actions that ensure the reliability of the system, such as lowering IROLs and SOLs. The proposed regional Reliability Standard does not relieve compliance with this requirement but, rather, adds more stringency by defining a maximum timeframe for removal and repair of protective equipment.

88. The Commission disagrees with Xcel's assertion that approval of WECC–PRC–STD–003–1 would sidestep the Commission's directive that NERC consider whether greater consistency can be achieved as NERC modifies PRC–003–1. Approval of the WECC regional Reliability Standard does not preclude the development of an appropriate level of uniformity on a nationwide basis. The Commission expects that all of the regions, including WECC, will work together to develop greater uniformity with regard to reporting procedures for misoperation of relays and remedial action schemes.

89. The Commission agrees with the shortcomings identified by NERC regarding WECC–PRC–STD–003–1 and

[81] 18 CFR 39.5(c)(2).

[82] Order No. 672 at P 291. *See also ERO Certification Order,* 116 FERC ¶ 61,062 at P 274.

[83] Protection systems are designed to detect and isolate faulty elements on a system, thereby limiting the severity and spread of system disturbances, and preventing possible damage to protected elements. *See* Order No. 693 at P 1418. Protection systems include protective relays, remedial action schemes (RAS), and special protection schemes.

[84] In Order No. 693 at P 1460, the Commission explained that, because NERC's PRC–003–1 requires the regions to establish procedures regarding misoperations, and those regional procedures had not been submitted, the Commission neither approved nor remanded the Reliability Standard.

[85] *Id.* at P 1460–61.

[86] *Id.*

[87] *See* Order No. 693 at P 1443–49.

expects WECC in developing a permanent, replacement standard to address these shortcomings as it has committed to do. In particular, we believe that regional definitions should conform to the definitions set forth in the NERC glossary unless a specific deviation has been justified. Likewise, each Requirement should have a corresponding Measure and, in this case, *vice versa*.

5. WECC–PRC–STD–005–1 (Transmission Maintenance)

90. Regional Reliability Standard WECC–PRC–STD–005–1 requires each transmission owner and transmission operator of specified transmission paths to perform maintenance and inspection on those paths as described by its Transmission Maintenance and Inspection Plan (TMIP). The regional Reliability Standard identifies specific contents that each applicable transmission owner and transmission operator must include in its TMIP. For example, a TMIP must include the scheduled interval for time-based maintenance, describe maintenance and inspection methods, provide relevant checklists or forms and provide criteria for assessing the condition of a facility. Each applicable entity must retain all pertinent maintenance and inspection records for at least five years. Further, each applicable entity must annually certify to WECC staff that it has developed, documented and implemented a TMIP.

91. WECC's regional Reliability Standard corresponds to NERC Reliability Standard PRC–005–1 (Transmission and Generation Protection System Maintenance and Testing), which requires transmission owners, generator owners and distribution providers that own transmission protection systems to have a protection system maintenance and testing program for protection systems that affect the reliability of the bulk electric system.

92. NERC approved WECC–PRC–STD–005–1 with the condition that WECC meet its commitment to address identified shortcomings. With regard to WECC–PRC–STD–005–1, NERC identified various formatting concerns including the need to specify individual requirements instead of one formal requirement with multiple subparts (including statements and comments that do not read as requirements).

Comments

93. WECC states that the corresponding NERC Reliability Standard, PRC–005–1, requires a maintenance and inspection plan limited to relays, monitoring equipment, and special protection systems. WECC explains that relevant users, owners and operators must comply with the requirements of the NERC Reliability Standard. According to WECC, the proposed regional Reliability Standard goes further by requiring, for specified transmission paths, a highly detailed TMIP for all transmission and substation equipment components, including circuit breakers, relays, transformers, reactive devices, and transmission lines. It also requires applicable entities to maintain five years of maintenance records to verify compliance.

94. Xcel argues that WECC has failed to justify the need for this regional Reliability Standard based on physical differences in the bulk power system.

Commission Determination

95. The Commission approves regional Reliability Standard WECC–PRC–STD–005–1 as mandatory and enforceable in the Western Interconnection. As explained by WECC, the applicable users, owner and operators in the Western Interconnection must comply with NERC's PRC–003–1 and, in addition, the regional Reliability Standard. Accordingly, the Commission finds that the regional Reliability Standard satisfies the statutory standard for approval because it is more stringent than the corresponding NERC Reliability Standard by requiring, for specified transmission paths, a highly detailed maintenance and inspection plan for *all* transmission and substation equipment components. WECC–PRC–STD–005–1 imposes requirements well beyond the NERC Reliability Standards and improves reliability because disciplined maintenance on equipment such as transmission lines, circuit breakers, power transformers and regulators will help prevent failures during operation.

96. Moreover, WECC in its comments provided a persuasive need for the regional Reliability Standard as well as a demonstration that the regional Reliability Standard is more stringent than the corresponding NERC standard. Thus, we reject Xcel's protest on this issue.

97. Requirement WR1.b(i)(a)(2) of the regional Reliability Standard requires the TMIP to describe the maintenance practices for station equipment including remedial action scheme (RAS) systems, which are also referred to as ''special protection systems.'' [88] This regional Requirement corresponds more closely to NERC Reliability Standard PRC–017–0 (Special Protection System Maintenance and Testing). It appears that the NERC Reliability Standard includes slightly more specificity in that it requires a special protection system maintenance program to include, among other things, batteries and instrument transformers, which are not specified in WECC–PRC–STD–005–1. Because WECC's regional Reliability Standards are *in addition* to the NERC Reliability Standards, we would expect the maintenance plans of applicable entities in the West to include these details identified in NERC Reliability Standard PRC–017–0.

98. The Commission agrees with NERC's concerns regarding the format and content of WECC–PRC–STD–005–1 and expects WECC, in developing a permanent, replacement standard, to address these concerns, including but not limited to inclusion of all relevant documents.

6. WECC–TOP–STD–007–0 (Operating Transfer Capability)

99. Regional Reliability Standard WECC–TOP–STD–007–0 applies to transmission operators of 40 specified transmission paths. The goal of this regional Reliability Standard is to ensure that the operating transfer capability limits requirements of the Western Interconnection are not exceeded.[89] It includes a Measure that provides ''actual power flow on all transmission paths shall at no time exceed the [operating transfer capability] for more than 20 minutes for paths that are stability limited, or for more than 30 minutes for paths that are thermally limited.''

100. The corresponding NERC Reliability Standard, TOP–007–0, requires that violations of SOL and IROL be promptly reported to the reliability coordinator so that it can direct corrective action and inform other affected systems. It also requires a transmission operator to mitigate an IROL violation as soon as possible but no longer than 30 minutes. In Order No. 693, the Commission approved TOP–007–0 as mandatory and enforceable.[90]

101. NERC approved WECC–TOP–STD–007–0 with the condition that

[88] *See* NERC glossary at 16 (defining both terms as ''an automatic protection system to detect abnormal or predetermined system conditions, and take corrective actions * * *'').

[89] Requirement WR1 of WECC–TOP–STD–007–0 defines ''capability limits requirements'' as the maximum amount of actual power that can be transferred over direct or parallel transmission elements comprising: An interconnection from one transmission operator area to another, or a transmission path within a transmission operator area.

[90] Order No. 693 at P 1674.

WECC meet its commitment to address identified shortcomings, including formatting concerns and inconsistency between the NERC and WECC definition of the term ''disturbance.''

Comments

102. WECC comments that NERC Reliability Standard TOP–007–0 requires transmission operators to return the system to within IROL limits for each incident in which an IROL is exceeded. While transmission operators in the Western Interconnection must comply with the NERC requirement, WECC–TOP–STD–007–0 ''goes further in limiting the time period of an Operational Transfer Capability (which is more conservative than an IROL) exceedance to no more than 20 minutes when the limit is based on potential voltage or transient stability.'' [91] WECC explains that the 20-minute limit was developed after two major disturbances in 1996 that caused the system to break up rapidly. WECC also states that the regional Reliability Standard applies to 40 clearly defined transmission paths, many of which would not be defined by NERC as having IROL requirements.

103. Xcel protests that no technical justification has been provided for WECC–TOP–STD–007–0.

Commission Determination

104. The Commission approves WECC–TOP–STD–007–0 as mandatory and enforceable in the Western Interconnection. WECC has provided an adequate explanation of the need for this regional Reliability Standard and also adequately explained how the Requirements are more stringent than the Requirements of the corresponding NERC Reliability Standard. In particular, the imposition of a 20-minute limit is more restrictive than NERC's TOP–007–0 and is a prudent means of limiting the risk of blackouts, consistent with sound engineering principles. Thus, we disagree with Xcel that WECC–TOP–STD–007–0 has not been adequately justified.

105. The Commission is concerned regarding a possible inconsistency within WECC–TOP–STD–007–0. As background, NERC Reliability Standard IRO–005–1 (Reliability Coordination—Current Day Operations) provides, *inter alia,* that ''if a potential or actual IROL violation cannot be avoided through proactive intervention, the Reliability Coordinator shall initiate control actions or emergency procedures to relieve the violation without delay, and no longer than 30 minutes.'' In Order No. 693, the Commission expressed concern that IRO–005–1 could be interpreted as allowing a system operator to respect IROLs in one of two ways: (1) Allowing IROL to be exceeded during normal operations, *i.e.*, prior to a contingency, provided that corrective actions are taken within 30 minutes; or (2) allowing IROL to be exceeded only after a contingency and subsequently returning the system to a secure condition as soon as possible, but no longer than 30 minutes.[92] The Commission explained that the system could be one contingency away from potential cascading failure if operated under the first interpretation and two contingencies away from cascading failure under the second interpretation. The Commission directed NERC to conduct a survey on IROL practices and actual operating experiences of managing within IROL. The survey results will provide guidance on the frequency, duration and magnitude of IROL violations and whether these IROL violations occur during normal or contingency conditions.

106. With regard to WECC–TOP–STD–007–0, Requirement WR1.b. provides that ''[t]he interconnected power system shall remain stable upon loss of any one single element without system cascading that could result in the successive loss of additional elements.'' This Requirement suggests that WECC expects that IROLs will be addressed in such a manner that the system is two contingencies away from a cascading failure, which is consistent with the more conservative interpretation of the NERC Reliability Standard IRO–005–1.[93]

107. However, Measure WM1 of WECC–TOP–STD–007–0 may not be consistent with Requirement WR1.b since it states ''[a]ctual power flow on all transmission paths shall at no time exceed the OTC for more than 20 minutes for paths that are stability limited, or more than 30 minutes for paths that are thermally limited.'' This Measure is more consistent with the first interpretation of NERC Reliability Standard IRO–005–1. Simply put, it could be interpreted that WECC Requirement WR1.b results in the power system being operated two contingencies away from a cascading outage while WECC Measure WM1 results in the power system being operated one contingency away from a cascading outage.

108. Thus, it is possible to understand the WECC Measure as less stringent than NERC's IRO–005–1, if the latter is interpreted conservatively. While the Commission has stated that a Requirement of a Reliability Standard sets forth the obligations of the applicable users, owners and operators,[94] the Commission is concerned regarding the circumstances under which WECC–TOP–STD–007–0 would be implemented and the amount of time an entity is allowed to be in violation of an IROL without the possibility of being found in non-compliance. Accordingly, the Commission directs NERC to submit a filing within 30 days of the date of this order explaining whether Requirement WR1.b is consistent with the second interpretation of IRO–005–1 (two contingencies away from cascading failure).[95]

109. Moreover, Measure WM1 of WECC–TOP–STD–007–0, which sets forth the 20 and 30 minutes time limits for exceeding operating transfer capability, states responsibilities of applicable entities and, thus, is more appropriately a requirement than a Measure. Accordingly, pursuant to section 215(d)(5) of the FPA and section 39.5(f) of the Commission's regulations, we direct that WECC in developing a permanent, replacement regional Reliability Standard: (1) Clarify any inconsistency between the Requirement WR1.b and corresponding Measure WM1; and (2) ensure that the requirements currently set forth in Measures WM1 are set forth in the Requirements and that corresponding Measures simply quantify the frequency, duration and magnitude of the violations as determined by the Requirements.

110. In addition, we expect that WECC will address the shortcomings identified by NERC in developing a permanent, replacement regional Reliability Standard.

7. *WECC–VAR–STD–002a–1 (Automatic Voltage Regulators)*

111. Regional Reliability Standard WECC-VAR-STD–002a–1 applies to generator operators of synchronous generating units equipped with Automatic Voltage Regulators in the

[91] WECC Comments at 12.

[92] *See* Order No. 693 at P 945–51 and n.303.

[93] In addition to requiring the system to be operated to withstand the loss of a single element, WECC–TOP–STD–007–0 requires operators to take into consideration single events that might cause the loss of multiple elements. *See* NERC Filing, WECC–TOP–STD–007–0 § B(b). In Order No. 693, we addressed element- versus event-based contingencies. *See* Order No. 693 at P 1604, 1715–1719.

[94] *Id.* at P 1929.

[95] If WECC construes Requirement WR1.b as consistent with the first interpretation of IRO–005–1, we will consider whether modifications are necessary to protect the reliability of the Bulk Power System upon consideration of the survey results noted above.

Western Interconnection.[96] The stated purpose of the regional Reliability Standard is to ensure that automatic voltage control equipment on synchronous generators shall be kept in service at all times, except in specified circumstances, and that outages of such equipment must be coordinated. It requires that generator operators must normally operate automatic voltage control equipment in voltage control mode and set to respond effectively to voltage deviations.

112. Related NERC Reliability Standard VAR–002–1 (Generator Operation for Maintaining Network Voltage Schedules) requires generator operators to operate each generator connected to the interconnected transmission grid in the automatic voltage control mode unless the generator operator has notified the transmission operator.[97] Unless exempted by the transmission operator, the generator operator must maintain voltage or reactive power output as directed by the transmission operator.

113. NERC approved WECC–VAR–STD–002a–1 with the condition that WECC meet its commitment to address identified format-related shortcomings.

Comments

114. WECC comments that, in addition to compliance with the related NERC Reliability Standard, the WECC regional Reliability Standard requires automatic voltage regulators to be in service and in voltage control mode with very limited exceptions. WECC explains that it instituted this requirement after a 1996 disturbance, which was caused by insufficient supply of reactive power from generators, including automatic voltage regulators that were not operating in voltage control mode. As a result of this experience, WECC determined that there should be only very limited circumstances where a generator should remove its unit from AVR operation.

115. Xcel asserts that WECC has not provided any technical justification for the regional Reliability Standard.

Commission Determination

116. The Commission approves Reliability Standard WECC–VAR–STD–002a–1 as mandatory and enforceable in the Western Interconnection. The Commission agrees with WECC that this regional Reliability Standard is more stringent than the related NERC Reliability Standard. WECC–VAR–STD–002a–1 requires all synchronous generators to have their voltage regulator in service at all times with only exceptions for specified circumstances. The related NERC Reliability Standard, VAR–002–1, permits a generator to remove its automatic voltage regulator from service for additional reasons. The regional standard is appropriate to avoid the root causes of prior disturbances in the Western Interconnection. We reject Xcel's protest as WECC has adequately justified the need for this regional Reliability Standard.

117. As with the other regional Reliability Standards, we expect that WECC, in developing a permanent, replacement standard, will address the shortcomings identified by NERC regarding WECC–VAR–STD–002a–1.

8. *WECC–VAR–STD–002b–1 (Power System Stabilizers)*

118. Regional Reliability Standard WECC–VAR–STD–002b–1 applies to generator operators with generators equipped with power system stabilizers. A power system stabilizer is part of the excitation control system of a generator used to increase power transfer levels by improving power system dynamic performance. It requires that power system stabilizers on generators must be kept in service at all times, except in specified circumstances, and that the power system stabilizers must be ''properly tuned'' in accordance with WECC requirements. This standard does not have a corresponding NERC Reliability Standard.

119. NERC approved WECC–VAR–STD–002b–1 and identified several format-related shortcomings for WECC to address.

Comments

120. WECC states that WECC–VAR–STD–002b-1 requires generator operators to always have power system stabilizers in service with very limited exceptions. It explains that this requirement was developed after the August 1996 disturbance in the Western Interconnection in which oscillations that could possibly have been attenuated by power system stabilizers were a factor.

121. Xcel states the proposed standard is deficient because it does not define ''power system stabilizers'' and because WECC has not provided a technical justification for the standard.

Commission Determination

122. The Commission approves WECC–VAR–STD–002b–1 as mandatory and enforceable in the Western Interconnection. The regional Reliability Standard is justified as it addresses matters that are not addressed by a NERC Reliability Standard. Moreover, WECC explains that the regional Reliability Standard is justified as a means to avoid oscillations that contributed to previous disturbances in the Western Interconnection.

123. We reject Xcel's protest since the term ''power system stabilizer'' is generally understood as described above, and Xcel has not provided any explanation why the regional Reliability Standard is deficient without a formal definition. Finally, as with the other regional standards, we expect WECC to address the shortcomings identified by NERC when developing a permanent, replacement standard.

D. Effective Date

124. As requested by NERC and WECC, the proposed regional Reliability Standards shall take effect on June 18, 2007 to coincide with the effective date of the Reliability Standards that were approved in Order No. 693.

E. Information Collection Statement

125. The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[98] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of an agency rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Paperwork Reduction Act (PRA)[99] requires each federal agency to seek and obtain OMB approval before undertaking a collection of information directed to ten or more persons, or continuing a collection for which OMB approval and validity of the control number are about to expire.[100]

126. This order approves eight regional Reliability Standards that were submitted by NERC as the ERO. Section 215 of the FPA authorizes the ERO to submit Reliability Standards to provide for the Reliable Operation of the Bulk-Power System. Pursuant to the statute, the ERO must submit each Reliability Standard that it proposes to be made

[96] An ''automatic voltage regulator'' is a device that continuously monitors the generator terminal voltage and changes the reactive power output as required to maintain (or regulate) the voltage within a pre-determined voltage range. For example, if a load increase causes a decline in system voltages and thereby the terminal voltage of a generator, the automatic voltage regulator will increase the generator's reactive output to raise the terminal voltage.

[97] In Order No. 693 at P 1884, the Commission approved VAR–002–1.

[98] 5 CFR 1320.8 (2005).

[99] 44 U.S.C. 3501–3520.

[100] 44 U.S.C. 3502(3)(A)(i), 44 U.S.C. 3507(a)(3).

effective to the Commission for approval.[101]

127. The eight proposed Reliability Standards do not require responsible entities to file information with the Commission. However, the standards do require responsible entities to file periodic reports with WECC and to develop and maintain certain information for a specified period of time, subject to inspection by WECC. WECC–BAL–STD–002–0 requires balancing authorities and reserve sharing groups to submit to WECC quarterly reports on operating reserves as well as reports after any instance of non-compliance. WECC–IRO–STD–006–0 requires transmission operators, balancing authorities and load-serving entities to document and report to WECC actions taken in response to direction to mitigate unscheduled flow. The standard also requires transmission operators to document required actions that are and are not taken by responsible entities. WECC–PRC–STD–001 requires certain transmission operators to submit to WECC annual certifications of protective equipment. WECC–PRC–STD–003–1 requires certain transmission operators to report to WECC any misoperation of relays and remedial action schemes. WECC–PRC–STD–005–1 requires certain transmission operators to maintain, in stated form, maintenance and inspection records pertaining to their transmission facilities. The standard also requires operators to certify to WECC that the operator is maintaining the required records. WECC–TOP–STD–007–0 requires certain transmission operators to submit to WECC quarterly reports on transfer capability data and compliance as well as reports after an instance of non-compliance. WECC–VAR–STD–002a–1 and WECC–VAR–STD–002b–1 require certain generators to submit quarterly reports to WECC on automatic voltage control and power system stabilizers. All of the foregoing regional Reliability Standards require the reporting entity to retain relevant data in electronic form for one year or for a longer period if the data is relevant to a dispute or potential penalty, except that WECC–PRC–STD–005–1 requires retention of maintenance and inspection records for five years and retention of other data for four years.

128. We do not believe our approval of the WECC Regional Reliability Standards will result in a significant increase in reporting burdens as compared to current practices in WECC. As NERC and WECC explain, the eight Regional Reliability Standards are translations of existing WECC criteria pursuant to its RMS program. The eight proposed standards: (1) Reflect practices that are currently in place on a contractual or voluntary basis; (2) represent discrete differences from nation-wide, mandatory Reliability Standards that will take effect on June 18, 2007; and (3) will be replaced by permanent standards developed by WECC. Moreover, with only limited exceptions, the reporting requirements in the regional Reliability Standards apply to large entities that have been complying with those standards for several years. The only possible exception is WECC–IRO–STD–006–0, which requires applicable entities to comply with transmission operators' directions to reduce unscheduled flows. Our approval of this regional Reliability Standard might result in reporting requirements for load-serving entities that did not previously comply with WECC practices in this regard. We do not believe that the associated reporting requirement is significant. Under WECC–IRO–STD–006–0, applicable entities must document and report to WECC actions that those entities take in response to direction to reduce unscheduled flow. We do not expect that the number of occurrences or nature of the documentation will result in significant reporting burdens.

129. The Commission is submitting these reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

130. Our Estimates below are based on the total reporting burdens that arise under the approved standards, including reporting burdens that were already in place under WECC practices. Thus, the Estimates exceed the incremental burdens that result from our approval of the standards. The Estimates are based on the NERC compliance registry as of April 2007. For the Western Interconnection that is overseen by WECC, NERC and WECC have identified approximately 30 balancing authorities, 146 generator operators, 104 load-serving entities, 41 transmission operators, and 66 transmission owners * * * While NERC has registered 104 load-serving entities in the U.S. portion of WECC, we believe that only 50 load-serving entities will be affected by the reporting requirements that apply to load-serving entities (under WECC–IRO–STD–006–0) because those requirements apply only in relation to ''qualified transfer paths'' and because the number of such paths are limited. Similarly, although NERC has registered 41 transmission operators and 66 transmission owners in the U.S. portion of WECC, we believe only the 14 transmission operators and owners that operate 40 designated paths will be affected by reporting requirements under this order. We note that some transmission operators operate up to seven paths. This has been taken into account in our estimate in the line ''Transmission Operators/Owners'' in the table below.

131. NERC's compliance registry indicates that there is a significant amount of overlap among the entities that perform these functions. In some instances, a single entity may be registered under all four of these functions. Thus, the Commission estimates that the total number of entities required to comply with the information ''reporting'' or development requirements of the proposed Reliability Standards is approximately 180–200 entities.

Burden Estimate: The Public Reporting burden for the requirements in the present order is as follows:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–XXX:				
Balancing Authorities	30	1	20	600
Generator Operators	146	1	10	1460
Load-Serving Entities	50	1	10	500
Transmission Operators/Owners	14	1–7 each (total of 40)	40	1600

[101] *See* 16 U.S.C. 824(d).

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
Recordkeeping:				
Balancing Authorities			60	60
Generator Operators			146	146
Load-Serving Entities			50	50
Transmission Operators/Owners			160	160
Totals				416

(FTE = Full Time Equivalent or 2,080 hours)

Total Annual Hours for Collection: 4,160 reporting + 416 recordkeeping = *4,576* hours.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost to be $515,840 as shown below:

Reporting = 4,160 hours @ $120/hour = $499,200.

Recordkeeping = 416 hours @ $40/hour = $16,640.

Total Costs = Reporting ($499,200) + Recordkeeping ($16,640) = $515,840.

Title: FERC–725E Regional Reliability Standards (WECC).

Action: Proposed Collection of Information.

OMB Control No.: To be determined.

Respondents: Business or other for profit, and/or not for profit institutions.

Frequency of Responses: Periodic and intermittent.

Necessity of the Information: The eight Reliability Standards would implement the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power System.

Internal Review: The Commission has reviewed the requirements pertaining to mandatory Reliability Standards for the Bulk-Power System and determined the proposed requirements are necessary to meet the statutory provisions of the Energy Policy Act of 2005. These requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

132. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov]*. Comments on the requirements of this order may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission], e-mail: *oira_submission@omb.eop.gov*.

F. Regulatory Flexibility Act Certification

133. The Regulatory Flexibility Act of 1980 (RFA)[102] generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. As indicated above, based on available information regarding NERC's compliance registry, approximately 180–200 entities will be responsible for compliance with the eight regional Reliability Standards. Most of those entities, *i.e.*, balancing authorities, generator operators, transmission owners and operators, do not fall within the definition of small entities.[103] About one-fifth of the approximately 50 load-serving entities that are subject to the approved standards might qualify as small entities.

134. Based on this understanding, the Commission certifies that the approved standards will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

The Commission orders:

(A) The proposed regional Reliability Standards are hereby approved, as discussed in the body of this order.

(B) NERC is directed to submit a compliance filing within 30 days of this order, as discussed in the body of this order.

(C) WECC is directed to develop, for each of its regional Reliability Standards, sanctions that follow NERC guidelines as discussed in the body of this order.

(D) WECC is directed to develop modifications to regional Reliability Standards WECC–IRO–STD–006–0 and WECC–TOP–STD–007–0 through its Reliability Standards development process when developing permanent, replacement standards.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11685 Filed 6–15–07; 8:45 am]

BILLING CODE 6717–01–P

[102] 5 U.S.C. 601–612.

[103] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. *See* 15 U.S.C. 632 (2000). According to the SBA, a small electric utility is defined as one that has a total electric output of less than four million MWh in the preceding year.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–89–002]

Northern Natural Gas Company; Notice of Compliance Filing

June 11, 2007.

Take notice that on June 1, 2007, Northern Natural Gas Company (Northern) tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to be effective August 1, 2007:

Tenth Revised Sheet No. 1
13 Revised Sheet No. 2 75
Revised Sheet No. 53
Original Sheet No. 165
Original Sheet No. 166
Original Sheet No. 167
Sheet No. 168
First Revised Fifth Revised Sheet No. 403
First Revised Fifth Revised Sheet No. 403A
Second Revised Sheet No. 461
First Revised Sheet No. 462

Northern states that the above sheets are being filed to comply with Commission requirements issued in its April 10, 2007 order in Docket Nos. CP06–89 et al. related to the abandonment by sale of the West Hugoton facilities.

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,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. Eastern Time on June 22, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11646 Filed 6–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF85–93–005; EL07–64–000]

Ripon Cogeneration LLC; Notice of Filing

June 8, 2007.

Take notice that on May 23, 2007, Ripon Cogeneration LLC filed a request for temporary waiver of the Federal Energy Regulatory Commission's operating and efficiency standards for a topping-cycle qualifying cogeneration facility for calendar years 2006 and 2007, pursuant to 18 CFR 292.205(c) and 292.205(a).

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, 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 on or before the comment date. On or before the comment date, it is not necessary to 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,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 18, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11654 Filed 6–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–477–000]

Rockies Express Pipeline LLC; Notice Annual Report

June 8, 2007.

Take notice that on June 5, 2007, Rockies Express Pipeline LLC (Rockies Express) tendered for filing its annual report of the incidental operational gas purchase/sale transactions for the previous calendar year as required by Section 13.7 of the General Terms and conditions of its 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 on or before the date as indicated below. 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 F*ERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time June 15, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11651 Filed 6–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–481–000]

Saltville Gas Storage Company L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

June 11, 2007.

Take notice that on June 6, 2007, Saltville Gas Storage Company L.L.C. (Saltville) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix B to the filing, to become effective July 7, 2007.

Saltville states that the purpose of this filing is to make miscellaneous clean-up changes to various sections of the Saltville 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 § 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 F*ERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11645 Filed 6–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–482–000]

Tuscarora Gas Transmission Company; Notice of Tariff Filing

June 11, 2007.

Take notice that on June 7, 2007, Tuscarora Gas Transmission Company (Tuscarora) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 10, to become effective July 9, 2007.

Tuscarora states that this tariff sheet is being submitted to add tariff language that will clarify the pipeline's ability to offer firm transportation service with differing Maximum Transportation Quantity levels throughout a shipper's contract term.

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 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, D.C. 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,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11643 Filed 6–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 6, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–39–001.

Applicants: Goldman Sachs Group, Inc.

Description: Goldman Sachs Group, Inc's response to FERC Staff's deficiency letter issued on 2/26/07.

Filed Date: 05/14/2007 & 05/15/2007.

Accession Number: 20070514–5146 & 20070521–0579.

Comment Date: 5 p.m. Eastern Time on Monday, June 25, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER91–569–037.

Applicants: EWO Marketing, LP.

Description: EWO Marketing, LP submits a revised FERC Electric Tariff 3 in conformance with Order 614 pursuant to the April 25, 2007 order.

Filed Date: 05/24/2007.

Accession Number: 20070604–0203.

Comment Date: 5 p.m. Eastern Time on Thursday, June 14, 2007.

Docket Numbers: ER96–2495–029; ER97–4143–017; ER97–1238–024; ER98–2075–023; ER98–542–019.

Applicants: AEP Power Marketing Inc; AEP Service Corporation; AEP Energy Partners, LP; CSW Energy Services, Inc.; Central and South West Services, Inc.

Description: AEP Power Marketing, Inc et al submit a notice of Change in Status in connection with their authority to make sales at negotiated market-based rates.

Filed Date: 05/25/2007.

Accession Number: 20070531–0125.

Comment Date: 5 p.m. Eastern Time on Friday, June 15, 2007.

Docket Numbers: ER99–3426–007.

Applicants: San Diego Gas & Electric Company.

Description: San Diego Gas & Electric Company submits a notice of change in status in connection with a net increase in its generation capacity pursuant to section 35.27(c) of FERC's Regulations.

Filed Date: 05/30/2007.

Accession Number: 20070531–0086.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 20, 2007.

Docket Numbers: ER00–1049–008; ER02–506–008; ER98–2783–011; ER99–3822–011; ER07–841–001; ER01–140–007; ER07–842–001; ER00–1895–009;

ER07–843–001; ER07–844–001; ER07–845–001; ER07–846–001; ER99–4160–012; ER01–141–007; ER07–847–001; ER00–3696–008; ER01–943–007; ER05–1266–005; ER01–3109–009; ER01–1044–008; ER99–2157–008; ER02–553–007; ER02–2202–011; ER03–42–012.

Applicants: Bridgeport Energy, LLC; Bluegrass Generation Company, L.L.C.; Calcasieu Power, LLC; Casco Bay Energy Company, LLC; Dynegy Arlington Valley, LLC; Dynegy Danskammer, L.L.C.; Dynegy Kendall Energy, LLC; Dynegy Midwest Generation, Inc.; Dynegy Mohave, LLC; Dynegy Morro Bay, LLC; Dynegy Moss Landing, LLC; Dynegy Oakland, LLC; Dynegy Power Marketing, Inc.; Dynegy Roseton, L.L.C.; Dynegy South Bay, LLC; Griffith Energy LLC; Heard County Power, L.L.C.; Ontelaunee Power Operating Company, LLC; Renaissance Power, L.L.C.; Riverside Generating, L.L.C.; Rocky Road Power, LLC; Rolling Hills Generating, L.L.C.; Sithe Energy Marketing, L.P.; sithe/Independence Power Partners.

Description: Bluegrass Generation Co, LLC's et al CD containing the Workpapers of Julie R Soloman to its Notice of non-material change in status, request to synchronize Triennial Market Power Analysis due dates etc under ER02–506 et al.

Filed Date: 05/31/2007.

Accession Number: 20070531–4019.

Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER01–1263–008; ER03–160–007; ER02–900–007; ER02–537–008; ER02–1052–007; ER96–1947–021.

Applicants: Mirant Las Vegas, LLC; Mirant Sugar Creek, LLC; Mirant Zeeland, L.L.C.

Description: Mirant Las Vegas Power Company, LLC et al informs FERC of certain changes in status with respect to the characteristics upon which the Commission previously relied in granting market-based rate authority.

Filed Date: 05/31/2007.

Accession Number: 20070604–0204.

Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER04–734–002.

Applicants: Barclays Bank PLC.

Description: Barclays Bank PLC submits its Triennial Updated Market Power Analysis.

Filed Date: 06/01/2007.

Accession Number: 20070605–0192.

Comment Date: 5 p.m. Eastern Time on Friday, June 22, 2007.

Docket Numbers: ER06–451–021; ER06–1467–003.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an errata to its 4/2/07 compliance filing.

Filed Date: 05/30/2007.

Accession Number: 20070604–0159.

Comment Date: 5 p.m. Eastern Time on Friday, June 8, 2007.

Docket Numbers: ER06–1367–003; ER07–239–002; ER99–1714–006; ER06–745–002.

Applicants: BG Dighton Power, LLC; BG Energy Merchants, LLC; Lake Road Generating Company, L.P.; MASSPOWER.

Description: BG Dighton Power LLC et al submits a notification of change in status to inform FERC of a non-material departure from the characteristics and on 5/31/07 submits a correction to this filing.

Filed Date: 05/30/2007; 05/31/2007.

Accession Number: 20070601–0094; 20070601–0095.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 20, 2007.

Docket Numbers: ER07–153–002.

Applicants: Ameren Services Company.

Description: Ameren Services Company on behalf of Central Illinois Light Company dba AmerenCILCO et al submits revisions to the Ameren Illinois Operating Companies' Ancillary Services Tariff, effective 1/1/07.

Filed Date: 05/30/2007.

Accession Number: 20070601–0104.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 20, 2007.

Docket Numbers: ER07–445–002.

Applicants: Duke Energy Indiana, Inc.

Description: Duke Energy Corporation submits the Interim Agreement as a supplemental response to the data request from Commission Staff.

Filed Date: 05/31/2007.

Accession Number: 20070604–0202.

Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–502–001.

Applicants: PacifiCorp.

Description: Refund Report of PacifiCorp submits a Refund Report pursuant to Commission's order issued March 30, 2007.

Filed Date: 05/30/2007.

Accession Number: 20070530–5036.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 20, 2007.

Docket Numbers: ER07–641–001.

Applicants: Puget Sound Energy, Inc.

Description: Puget Sound Energy, Inc submits substitute sheets that designates their rate schedule for reactive power service from the Goldendale Facility as Rate Schedule 425.

Filed Date: 05/31/2007.

Accession Number: 20070604–0214.

Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–717–001.

Applicants: Entergy Services, Inc.

Description: Entergy Services Inc submits an Amendment to its 4/5/07 notice of adoption of revised North American Electric Reliability Council's Transmission Loading Relief Procedures.

Filed Date: 05/30/2007.

Accession Number: 20070601–0100.

Comment Date: 5 p.m. Eastern Time on Friday, June 8, 2007.

Docket Numbers: ER07–764–001.

Applicants: Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas, LLC submits a compliance filing correcting the designation of its rate schedule in accordance with Order No. 614.

Filed Date: 05/14/2007.

Accession Number: 20070514–5084.

Comment Date: 5 p.m. Eastern Time on Thursday, June 14, 2007.

Docket Numbers: ER07–829–001.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits the corrected Confirmation Letter and requests that it replace the Confirmation Letter dated 4/27/07.

Filed Date: 05/30/2007.

Accession Number: 20070601–0099.

Comment Date: 5 p.m. Eastern Time on Friday, June 8, 2007.

Docket Numbers: ER07–953–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits a newly executed Generator Special Facilities Agreement in accordance with section 205(d) of the FPA.

Filed Date: 05/25/2007.

Accession Number: 20070531–0170.

Comment Date: 5 p.m. Eastern Time on Friday, June 15, 2007.

Docket Numbers: ER07–955–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co. submits an explanatory Statement to its Settlement Agreement w/Los Angeles Department of Water & Power and on 6/1/06 submits an errata to this filing.

Filed Date: 05/29/2007; 06/01/07.

Accession Number: 20070531–0171.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 19, 2007.

Docket Numbers: ER07–956–000.

Applicants: Entergy Services, Inc.

Description: Entergy Operating Companies submits rates to implement the decision of the Commission as contained in Opinion 480 and 480–A and the 5/25/07 Order.

Filed Date: 05/29/2007.
Accession Number: 20070531–0240.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 19, 2007.

Docket Numbers: ER07–957–000.
Applicants: Southern Power Company.
Description: Southern Power Co submits a application seeking authorization to make market-based rate wholesale power sales to its affiliate Gulf Power Co.
Filed Date: 05/30/2007.
Accession Number: 20070601–0041.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 20, 2007.

Docket Numbers: ER07–959–000.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: Wolverine Power Supply Cooperative, Inc submits a notice of cancellation of its Open Access Transmission Tariff.
Filed Date: 05/30/2007.
Accession Number: 20070601–0083.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 20, 2007.

Docket Numbers: ER07–960–000.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: Wolverine Power Supply Cooperative, Inc submits an executed Wholesale Distribution Service Agreement with Tower Kleber Limited Partnership.
Filed Date: 05/30/2007.
Accession Number: 20070601–0082.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 20, 2007.

Docket Numbers: ER07–961–000.
Applicants: MASSPOWER.
Description: MASSPOWER submits an amendment to its market-based rate schedule, FERC Electric Tariff 1, pursuant to Order 671.
Filed Date: 05/30/2007.
Accession Number: 20070601–0081.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 20, 2007.

Docket Numbers: ER07–962–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits Service Agreement 192 to FERC Electric Tariff, Third Revised Volume 6 with the City of Wathena, Kansas.
Filed Date: 05/30/2007.
Accession Number: 20070601–0080.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 20, 2007.

Docket Numbers: ER07–963–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits Service Agreement 193 under its FERC Electric Tariff, Third Revised Volume 6 with the City of Iola, Kansas.
Filed Date: 05/30/2007.
Accession Number: 20070601–0079.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 20, 2007.

Docket Numbers: ER07–964–000.
Applicants: UNS Electric, Inc.
Description: UNS Electric Inc submits a Market-Based Rate Tariff for the sale of electric energy and capacity etc.
Filed Date: 05/30/2007.
Accession Number: 20070601–0078.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 20, 2007.

Docket Numbers: ER07–965–000.
Applicants: EnergyCo Marketing and Trading, LLC.
Description: EnergyCo LLC submits a Market Based Rate Tariff for sale of electric energy, capacity, ancillary services, and firm transmission rights, etc.
Filed Date: 05/30/2007.
Accession Number: 20070601–0077.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 20, 2007.

Docket Numbers: ER07–966–000.
Applicants: Allegheny Energy Supply Company, LLC.
Description: Allegheny Energy Supply Co submits a petition requesting authorization to make wholesale power sales to its affiliate, The Potomac Edison Co.
Filed Date: 05/30/2007.
Accession Number: 20070601–0085.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 20, 2007.

Docket Numbers: ER07–967–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits an unexecuted amended Owners Coordinated Operation Agreement among itself and Southern California Edison Company et al.
Filed Date: 05/31/2007.
Accession Number: 20070601–0122.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–968–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits a Certificate of Concurrence to its 5/31/07 filing of an amendment to the 12/1/95 Interconnection Agreement with PacifiCorp designated as Rate Schedule 195.
Filed Date: 05/31/2007.
Accession Number: 20070601–0121.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–969–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company on behalf of Southern California Edison Company et al. submits a notice of cancellation of FERC Rate Schedule 38 et al.
Filed Date: 05/31/2007.
Accession Number: 20070601–0120.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–970–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits a Large Generator Interconnection Agreement with American Transmission Company, LLC et al.
Filed Date: 05/31/2007.
Accession Number: 20070601–0076.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–971–000.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc submits a Generator Imbalance Service Agreement with Pacific Industries, Inc pursuant to 18 CFR Part 35 and section 205 of the Federal Power Act etc.
Filed Date: 05/31/2007.
Accession Number: 20070601–0075.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–972–000.
Applicants: New England Power Pool Participants Committee.
Description: New England Power Pool Participants Committee submits this transmittal letter along with counterpart signature pages dated as of September 1, 1971.
Filed Date: 05/31/2007.
Accession Number: 20070601–0074.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–973–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits an Amendment to the 12/1/95 Interconnection Agreement with Pacific Gas and Electric Company pursuant to Section 205 of the Federal Power Act, U.S.C. 824d and Part 35 of FERC's Regulations.
Filed Date: 05/31/2007.
Accession Number: 20070604–0206.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–974–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company submits a fully-executed Wholesale Distribution Service Agreement with the City of Norway, Michigan pursuant to Section 35.12 of the Commission's Regulations.
Filed Date: 05/31/2007.
Accession Number: 20070604–0208.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–975–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company submits its proposed amendments to its Metering Service Agreement with Wisconsin Public Power Inc pursuant to Section 205 of the Federal Power Act etc.
Filed Date: 05/31/2007.
Accession Number: 20070604–0209.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–976–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co submits a Notice of Cancellation of the Amended and Restated Edison-PG&E Transmission Agreement (Rate Schedule 256).
Filed Date: 05/31/2007.
Accession Number: 20070604–0207.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–977–000.
Applicants: Southern California Edison Compan.
Description: Southern California Edison Co submits the Banning Substation Third Line Wholesale Distribution Load Interconnection Facilities Agreement with the City of Banning, CA.
Filed Date: 05/31/2007.
Accession Number: 20070604–0210.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–978–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits the Amended and Restated Midway Interconnection Agreement w/ Pacific Gas and Electric Company pursuant to Section 35.13 of FERC's Regulations etc.
Filed Date: 05/31/2007.
Accession Number: 20070604–0211.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–979–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits the Second Revised Sheet 1 and First revised Sheet 4 to their First Revised Rate Schedule 234.
Filed Date: 05/31/2007.
Accession Number: 20070604–0213.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–980–000.
Applicants: Xcel Energy Operating Companies.
Description: Xcel Energy Services Inc on behalf of Southwestern Public Service Co submits copies of a Connection Agreement with Golden Spread Electric Cooperative, Inc pursuant to Part 35 of FERC's Rules and Regulations.
Filed Date: 05/31/2007.
Accession Number: 20070604–0212.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–981–000.
Applicants: Barclays Capital Energy Inc.
Description: Barclays Capital Energy Inc submits an application for order accepting Initial Rate Schedule, waiving regulations, and granting blanket approvals.
Filed Date: 06/01/2007.
Accession Number: 20070605–0190.
Comment Date: 5 p.m.Eastern Time on Friday, June 22, 2007.

Docket Numbers: ER07–982–000.
Applicants: American Electric Power Service Corporation.
Description: American Electric Power Services Corporation designated agent for AEP Operating Companies submits and requests acceptance of Second Revised Interconnection and Local Delivery Service Agreement 1427 etc.
Filed Date: 06/01/2007.
Accession Number: 20070605–0189.
Comment Date: 5 p.m. Eastern Time on Friday, June 22, 2007.

Docket Numbers: ER07–983–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy Inc submits Service Agreement 194 under its FERC Electric Tariff, Third Revised Volume 6, Wholesale Electric Energy and Capacity Agreement with the City of Scranton, Kansas.
Filed Date: 05/31/2007.
Accession Number: 20070605–0187.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–984–000.
Applicants: Entergy Gulf States, Inc.
Description: Entergy Gulf States Inc submits an executed version of an amended and conformed Power Sales Agreement for the Toledo Bend Project with Sabine River Authority et al.
Filed Date: 05/31/2007.
Accession Number: 20070605–0188.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–985–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services Inc on behalf of Entergy Operating Companies submits an amendment to the Entergy System Agreement under ER07–985.
Filed Date: 05/30/2007.
Accession Number: 20070605–0186.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 20, 2007.

Docket Numbers: ER07–986–000.
Applicants: Bangor Hydro-Electric Company.
Description: Bangor Hydro-Electric Co submits proposed revisions to its local service schedule set forth as Schedule 21–BHE in the ISO New England Inc Transmission, Markets and Services Tariff.
Filed Date: 05/31/2007.
Accession Number: 20070605–0185.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–987–000.
Applicants: K Road BG Management LLC.
Description: K Road BG Management, LLC submits Notice of Cancellation of their market based rate tariff, FERC Electric Tariff 1, effective 6/1/07.
Filed Date: 05/31/2007.
Accession Number: 20070605–0184.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–989–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits an executed Service Agreement for Network Integration Transmission Service with Oklahoma Municipal Power Authority under ER07–989.
Filed Date: 05/31/2007.
Accession Number: 20070605–0201.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–990–000.
Applicants: American Transmission Company LLC.
Description: American Transmission Company, LLC submits an executed Distribution Interconnection Agreement with Kiel Electric Utility dated as of 5/16/07 pursuant to Part 35 of the Commission's Regulations.
Filed Date: 05/31/2007.
Accession Number: 20070605–0182.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–991–000.
Applicants: American Transmission Company LLC.
Description: American Transmission Co, LLC submits an executed Distribution-Transmission Interconnection Agreement with Sauk City Utilities dated as of 5/16/07.
Filed Date: 05/31/2007.
Accession Number: 20070605–0202.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–992–000.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: Golden Spread Electric Cooperative, Inc submits its Seventh Informational Filing setting forth updated fixed costs associated with rates charged for sales of replacement energy pursuant to Rate Schedule 35 etc.

Filed Date: 06/01/2007.
Accession Number: 20070605–0181.
Comment Date: 5 p.m. Eastern Time on Friday, June 22, 2007.

Docket Numbers: ER07–993–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits an Amended and Restated Large Generator Interconnection Agreement with Forward Energy, LLC et al.
Filed Date: 06/01/2007.
Accession Number: 20070605–0203.
Comment Date: 5 p.m. Eastern Time on Friday, June 22, 2007.

Docket Numbers: ER07–994–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits a Notice of Cancellation of Rate Schedule 148, the Transmission Service Exchange Agreement with the City of Vernon.
Filed Date: 05/31/2007.
Accession Number: 20070605–0107.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Take notice that the Commission received the following electric reliability filings:
Docket Numbers: RR07–9–001; RR07–10–001.
Applicants: North American Electric Reliability Corp.
Description: Compliance Filing of the North American Electric Reliability Corporation in Response to Paragraphs 42, 44 and 45 of May 18, 2007 Order—Submission of Revised Violation Risk Factors for Approved Reliability Standards.
Filed Date: 06/01/2007.
Accession Number: 20070601–5055.
Comment Date: 5 p.m. Eastern Time on Monday, July 2, 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 dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,
Secretary.
[FR Doc. E7–11642 Filed 6–15–07; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 8, 2007.

Take notice that the Commission received the following electric corporate filings:
Docket Numbers: EC07–101–000.
Applicants: AES Central Valley, L.L.C.; AES Delano, Inc.; Covanta Holding Corporation.
Description: AES Central Valley, LLC, AES Delano, Inc and Covanta Holdings Corp submit for approval of a transaction wherein Covanta Holding will acquire from Central Valley six wholly owned direct & indirect subsidiaries etc.
Filed Date: 06/04/2007.
Accession Number: 20070606–0194.
Comment Date: 5 p.m. Eastern Time on Monday, June 25, 2007.

Docket Numbers: EC07–102–000.
Applicants: Blue Canyon Windpower II LLC; Flat Rock Windpower LLC; Flat Rock Windpower II LLC; High Trail Wind Farm, LLC; EDP-Energias De Portugal, S.A.
Description: Blue Canyon Windpower II, LLC et al submits an application for authorization to dispose of jurisdictional facilities etc.
Filed Date: 06/01/2007.
Accession Number: 20070606–0196.
Comment Date: 5 p.m. Eastern Time on Friday, June 22, 2007.

Take notice that the Commission received the following electric rate filings
Docket Numbers: ER00–1857–007.
Applicants: Split Rock Energy LLC.
Description: Split Rock Energy LLC, Notice of Non-Material Change in Status.
Filed Date: 06/04/2007.
Accession Number: 20070604–5063.
Comment Date: 5 p.m. Eastern Time on Monday, June 25, 2007.

Docket Numbers: ER01–2508–002.
Applicants: ENMAX Energy Marketing, Inc.
Description: ENMAX Energy Marketing, Inc submits a notice of change in status that reflects a departure from the facts relied upon in the grant of market-based rate authority.
Filed Date: 06/04/2007.
Accession Number: 20070606–0188.
Comment Date: 5 p.m. Eastern Time on Monday, June 25, 2007.

Docket Numbers: ER06–700–004.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits Substitute Alternate First Revised Sheet 264 et al in compliance w/FERC's order on rehearing and compliance filings issued on 4/19/07.
Filed Date: 05/31/2007.
Accession Number: 20070604–0201.
Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER06–1355–002.
Applicants: Evergreen Wind Power, LLC.
Description: Errata to Notice of Non-Material Change in Status of Evergreen Wind Power, LLC.
Filed Date: 06/01/2007.
Accession Number: 20070601–5061.
Comment Date: 5 p.m. Eastern Time on Friday, June 15, 2007.

Docket Numbers: ER07–596–001.
Applicants: E. ON U.S., LLC.
Description: Louisville Gas and Electric Company et al submits information required by the 5/3/07 deficiency letter & informs of changes that after consideration & in response to

the deficiency letter they propose to make to the original filing.

Filed Date: 06/04/2007.

Accession Number: 20070606–0186.

Comment Date: 5 p.m. Eastern Time on Monday, June 25, 2007.

Docket Numbers: ER07–883–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits First Revised Service Agreement 1267 to FERC Electric Tariff, Fourth Revised Tariff 1.

Filed Date: 06/04/2007.

Accession Number: 20070606–0183.

Comment Date: 5 p.m. Eastern Time on Monday, June 25, 2007.

Docket Numbers: ER07–946–001.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc resubmits First Revised Sheet 8 in clean and red-line versions to replace First Revised Sheet 4, extending the existing Agreement, with City of Holton, KS, through 9/30/07.

Filed Date: 06/04/2007.

Accession Number: 20070606–0187.

Comment Date: 5 p.m. Eastern Time on Monday, June 25, 2007.

Docket Numbers: ER07–947–001.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc resubmits First Revised Sheet 8 in clear and red-line versions to replace First Revised Sheet 4, extending the existing Agreement through 9/30/07.

Filed Date: 06/04/2007.

Accession Number: 20070606–0169.

Comment Date: 5 p.m. Eastern Time on Monday, June 25, 2007.

Docket Numbers: ER07–948–001.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc resubmits First Revised Sheet 8 in clean and red-line versions to replace First Revised Sheet 4, extending the existing Agreement through 9/30/07.

Filed Date: 06/04/2007.

Accession Number: 20070606–0184.

Comment Date: 5 p.m. Eastern Time on Monday, June 25, 2007.

Docket Numbers: ER07–995–000.

Applicants: New York Independent System Operator, Inc.

Description: Request of the New York Independent System Operator, Inc for waiver of business practice standard re Standards for Business Practices and Communication Protocols for Public Utilities.

Filed Date: 06/04/2007.

Accession Number: 20070606–0185.

Comment Date: 5 p.m. Eastern Time on Monday, June 25, 2007.

Docket Numbers: ER07–996–000.

Applicants: Goldendale Energy Center, LLC.

Description: Goldendale Energy Center, LLC submits a Notice of Cancellation of its FERC Electric Tariff 1 pursuant to Sections 35.15 and 131.53 of FERC's Regulations.

Filed Date: 06/04/2007.

Accession Number: 20070606–0171.

Comment Date: 5 p.m. Eastern Time on Monday, June 25, 2007.

Docket Numbers: ER07–997–000.

Applicants: Calpine Fox LLC.

Description: Calpine Fox LLC submits a notice of cancellation of its FERC Electric Tariff 1 pursuant to Sections 35.15 and 131.53 of FERC's Regulations.

Filed Date: 06/04/2007.

Accession Number: 20070606–0170.

Comment Date: 5 p.m. Eastern Time on Monday, June 25, 2007.

Docket Numbers: ER07–998–000.

Applicants: CPN Pleasant Hill, LLC.

Description: CPN Pleasant Hill, LLC et al submits a Notice of Cancellation of its FERC Electric Tariff, Original Volume 1 pursuant to Sections 35.15 and 131.53 of FERC's Regulations.

Filed Date: 06/04/2007.

Accession Number: 20070606–0173.

Comment Date: 5 p.m. Eastern Time on Monday, June 25, 2007.

Docket Numbers: ER07–999–000.

Applicants: MEP Pleasant Hill, LLC.

Description: MEP Pleasant Hill, LLC submits a Notice of Cancellation of its FERC Electric Tariff, Original Volume 1 pursuant to Sections 35.15 and 131.53 of FERC's Regulations.

Filed Date: 06/04/2007.

Accession Number: 20070606–0172.

Comment Date: 5 p.m. Eastern Time on Monday, June 25, 2007.

Docket Numbers: ER07–1000–000; ER07–1001–000; ER07–1002–000.

Applicants: Las Vegas Power Company, LLC; Sugar Creek Power Company, LLC; Zeeland Power Company, LLC.

Description: Las Vegas Power Company, LLC, et al. informs FERC that as a result of name changes they have succeeded to the market-based rate tariffs of Mirant Las Vegas, LLC et al.

Filed Date: 06/04/2007.

Accession Number: 20070606–0174.

Comment Date: 5 p.m. Eastern Time on Monday, June 25, 2007.

Docket Numbers: ER07–1003–000.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc agent for Alabama Power Co et al. submits this 5/22/07, Revision 2 to the Agreement for Network Integration Transmission Service for Alabama Municipal Electric Authority dated 12/29/05.

Filed Date: 06/01/2007.

Accession Number: 20070606–0175.

Comment Date: 5 p.m. Eastern Time on Friday, June 22, 2007.

Docket Numbers: ER07–1004–000.

Applicants: Wisconsin Electric Power Company; Upper Peninsula Power Company.

Description: Wisconsin Electric Power Company et al. submit revisions to the Balancing Area Operations Coordination Agreement.

Filed Date: 06/04/2007.

Accession Number: 20070606–0176.

Comment Date: 5 p.m. Eastern Time on Monday, June 25, 2007.

Docket Numbers: ER07–1005–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits a Supplemental Generation Agreement w/ the City of Sabetha dated as of 5/29/07 pursuant to section 205(c) of the FPA and Part 35 of the Commission's Regulation.

Filed Date: 06/04/2007.

Accession Number: 20070606–0180.

Comment Date: 5 p.m. Eastern Time on Monday, June 25, 2007.

Docket Numbers: ER07–1006–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits a Supplemental Generation Agreement with the City of Minneapolis dated as of 5/29/07 pursuant to section 205(c) of the FPA and Part 35 of the Commission's Regulations.

Filed Date: 06/04/2007.

Accession Number: 20070606–0181.

Comment Date: 5 p.m. Eastern Time on Monday, June 25, 2007.

Docket Numbers: ER07–1007–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits a Supplemental Generation Agreement with the City of Holton, Kansas dated as of 5/21/07 pursuant to section 205(c) of the FPA and Part 35 of FERC's Regulations.

Filed Date: 06/04/2007.

Accession Number: 20070606–0182.

Comment Date: 5 p.m. Eastern Time on Monday, June 25, 2007.

Docket Numbers: ER07–1008–000.

Applicants: Kentucky Utilities Company.

Description: Kentucky Utilities Company submits Amendment #1 to Contract for Electric Service with the City of Madisonville, Kentucky pursuant to section 205(c) of the FPA etc.

Filed Date: 06/04/2007.

Accession Number: 20070606–0177.

Comment Date: 5 p.m. Eastern Time on Monday, June 25, 2007.

Docket Numbers: ER07–1009–000.

Applicants: Cleco Power LLC.

Description: Cleco Power LLC submits an Amendment to its OATT pursuant to

section 205 of the FPA, 16 USC, 824d and to Part 35 of FERC's Regulations.

Filed Date: 06/04/2007.

Accession Number: 20070606–0179.

Comment Date: 5 p.m. Eastern Time on Monday, June 25, 2007.

Docket Numbers: ER07–1010–000.

Applicants: Sumas Cogeneration Co LP.

Description: Sumas Cogeneration Company, LP's application for order accepting market-based rate tariff, granting waivers and blanket authority.

Filed Date: 06/04/2007.

Accession Number: 20070606–0178.

Comment Date: 5 p.m. Eastern Time on Monday, June 25, 2007.

Docket Numbers: ER07–1011–000.

Applicants: UGI Utilities, Inc.

Description: UGI Utilities, Inc submits the corrected Annual Update which was originally submitted on 5/31/07 with detailed calculations conducted through its cost-of-service formula rate etc.

Filed Date: 05/31/2007.

Accession Number: 20070606–0081.

Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–1012–000.

Applicants: UGI Utilities, Inc.

Description: UGI Utilities, Inc submits First Revised Sheet 309B et al. to PJM Open Access Transmission Tariff etc.

Filed Date: 05/31/2007.

Accession Number: 20070606–0193.

Comment Date: 5 p.m. Eastern Time on Thursday, June 21, 2007.

Docket Numbers: ER07–1014–000.

Applicants: NSTAR Electric Company.

Description: NSTAR Electric Co submits its informational filing containing the true-up billings under their Local Service Schedules etc.

Filed Date: 06/01/2007.

Accession Number: 20070606–0189.

Comment Date: 5 p.m. Eastern Time on Friday, June 22, 2007.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC07–51–000.

Applicants: CMS Enterprises Company.

Description: CMS Enterprises Company notification of Self-Certification of Foreign Utility Company Status of Jamaica Private Power Co. Ltd and Private Power Operators Ltd.

Filed Date: 06/05/2007.

Accession Number: 20070605–5026.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 26, 2007.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH07–18–000.

Applicants: DQE Holdings LLC.

Description: DQE Holdings LLC submit a FERC Form 65 B Waiver.

Filed Date: 06/04/2007.

Accession Number: 20070604–5052.

Comment Date: 5 p.m. Eastern Time on Monday, June 25, 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 dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11656 Filed 6–15–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC Docket Nos. CP06–61–000, –001, –002 and CP01–23–003; CA State Clearinghouse No. 2006081127; BLM Reference No. CACA–42662]

The California State Lands Commission, and the Bureau of Land Management; North Baja Pipeline, LLC; Notice of Availability/Completion of the Final Environmental Impact Statement/Report and Proposed Land Use Plan Amendment for the Proposed North Baja Pipeline Expansion Project

June 8, 2007.

The environmental staffs of the Federal Energy Regulatory Commission (FERC or Commission), the California State Lands Commission (CSLC), and the Bureau of Land Management (BLM) (collectively referred to as the Agency Staffs) have prepared the final environmental impact statement/environmental impact report and proposed land use plan amendment (final EIS/EIR/plan amendment) to address North Baja Pipeline, LLC's (North Baja) proposed expansion of its natural gas pipeline system.

The final EIS/EIR/plan amendment was prepared as required by the National Environmental Policy Act (NEPA), the California Environmental Quality Act, and the Federal Land Policy and Management Act. The purpose of the document is to inform the public and the permitting agencies about the potential adverse and beneficial environmental impacts of the proposed North Baja Pipeline Expansion Project (Project or proposed Project) and its alternatives, and recommend mitigation measures that would reduce the significant adverse impacts to the maximum extent possible, and, where feasible, to a less than significant level. The Agency Staffs have concluded that if the Project is constructed and operated in accordance with applicable laws and regulations, North Baja's proposed mitigation, and the Agency Staffs' additional mitigation measures, it would be an environmentally acceptable action.

The FERC is the lead Federal agency and will use the document to consider the environmental impacts that could result if it issues North Baja a Certificate of Public Convenience and Necessity and a Presidential Permit amendment under sections 7 and 3, respectively, of the Natural Gas Act. The CSLC is the lead State agency and will use the document to consider North Baja's application to amend its existing right-

of-way lease across the State's Sovereign and School Lands in conjunction with the environmental impacts that could result from any part of the Project in California.

The BLM is participating as a cooperating agency in the preparation of the document because the Project would cross Federal land under the jurisdiction of the Palm Springs-South Coast, El Centro, and Yuma Field Offices. The Bureau of Reclamation (BOR) is also a cooperating agency in the preparation of the document because lands administered by the BOR would be crossed by the Project. Under section 185(f) of the Mineral Leasing Act of 1920, the BLM has the authority to issue Right-of-Way Grants for all affected Federal lands. The final EIS/EIR/plan amendment will be used by the BLM to consider whether to amend North Baja's existing Right-of-Way Grant and issue Temporary Use Permits for the installation of approximately 67.4 miles of pipeline and ancillary facilities across Federal lands managed by the BLM, the BOR, and the U.S. Fish and Wildlife Service (FWS). The final EIS/EIR/plan amendment will also be used by the BLM to consider amending the California Desert Conservation Area Plan (as amended), which would be necessary for pipeline construction outside of designated utility corridors, as well as amending the Yuma District Resource Management Plan, which would be necessary for pipeline construction across the Milpitas Wash Special Management Area.

The BLM proposes to adopt the final EIS/EIR/plan amendment per Title 40 Code of Federal Regulations (CFR) § 1506.3 to meet its responsibilities under NEPA and its planning regulations per Title 43 CFR Part 1610. The BLM will present separate Records of Decision for the Right-of-Way Grant and the plan amendments for the North Baja Pipeline Expansion Project after the issuance of the final EIS/EIR/plan amendment. The concurrence or non-concurrence of the BOR and the FWS would be considered in the BLM's decision.

The existing North Baja system is currently certificated by the FERC to transport 512,500 dekatherms per day (Dthd) (500 million standard cubic feet per day [MMscfd]) of natural gas in a southbound direction. Once completed, the expanded system would be capable of transporting up to 2,932,000 Dthd (2,753 MMscfd) of natural gas from planned liquefied natural gas (LNG) storage and vaporization terminals located on the Baja California coast in Mexico in a northbound direction for delivery to customers in California and Arizona. In addition to the new volumes from the LNG terminals, North Baja would continue to offer southbound gas transportation service for several existing shippers.

The final EIS/EIR/plan amendment addresses the potential environmental effects of the construction and operation of the following facilities proposed by North Baja:

- Up to 79.8 miles of pipeline loop [1] (B-Line) adjacent to North Baja's existing pipeline (A-Line) consisting of 11.7 miles of 42-inch-diameter pipeline extending from the existing Ehrenberg Compressor Station at milepost (MP) 0.0 in La Paz County, Arizona to the existing Rannells Trap at MP 11.7 in Riverside County, California, and 68.1 miles of 48-inch-diameter pipeline extending from Rannells Trap to an interconnection at the U.S.-Mexico border at MP 79.8 in Imperial County, California;
- 2.1 miles of 36-inch-diameter pipeline lateral [2] (Arrowhead Extension) extending from the proposed B-Line at MP 7.4 to Southern California Gas Company's (SoCalGas) existing Blythe Compressor Station in Riverside County;
- 45.7 miles of 16-inch-diameter pipeline lateral (Imperial Irrigation District [IID] Lateral) extending from MP 74.5 of the B-Line near the existing Ogilby Meter Station to the existing IID El Centro Generating Station in Imperial County;
- Modifications at the existing Ehrenberg Compressor Station in LaPaz County and the existing Ogilby Meter Station in Imperial County to allow northbound flow of natural gas;
- Metering modifications inside the existing El Paso Natural Gas Company (El Paso) Meter Station at the Ehrenberg Compressor Station site to allow LNG-source gas to be delivered into the El Paso system;
- One meter station (Blythe-Arrowhead Meter Station) at SoCalGas' existing Blythe Compressor Station in Riverside County to measure gas delivery from the North Baja system to SoCalGas;
- One meter station (El Centro Meter Station) at the IID's existing El Centro Generating Station in Imperial County to measure gas delivery from the North Baja system to the IID;
- Two taps and crossover piping where the Arrowhead Extension would connect with the existing A-Line and proposed B-Line in Riverside County;
- One tap where the IID Lateral would connect with the proposed B-Line in Imperial County;
- Four pig [3] launchers;
- Five pig receivers;
- Nine remote manual valves with automatic shutdown capability on the B-Line, adjacent to the existing A-Line valve sites; and
- Four remote manual valves with automatic shutdown capability on the IID Lateral.

The final EIS/EIR/plan amendment has been placed in the public files of the FERC and the CSLC and is available for public inspection at:

Federal Regulatory Energy Commission, Public Reference Room, 888 First St., NE., Room 2A, Washington, DC 20426, (202) 208–1371.

California State Lands Commission, 100 Howe Avenue, Suite 100 South, Sacramento, CA 95825, (916) 574–1938.

The final EIS/EIR/plan amendment is also available for viewing on the FERC and CSLC Web sites at the Internet addresses below:
http://www.ferc.gov
http://www.slc.ca.gov.

A limited number of copies of the final EIS/EIR/plan amendment are available from the FERC's Public Reference Room identified above. These copies may be requested in hard copy or as .pdf files on a CD that can be read by a computer with a CD-ROM drive. In addition, copies of the final EIS/EIR/plan amendment have been mailed to Federal, State, and local government agencies; elected officials; Native American tribes; affected landowners; local libraries and newspapers; intervenors to the FERC's proceeding; and other interested parties. Hard copies of the final EIS/EIR/plan amendment can be viewed at the following libraries in the Project area:

Yuma County Library District, 350 3rd Avenue, Yuma, AZ 85364.

Palo Verde Valley Library, 125 W. Chanslorway, Blythe, CA 92225.

El Centro Public Library, 539 State Street, El Centro, CA 92243.

Hemet Public Library, 510 E. Florida Avenue, Hemet, CA 92543.

Imperial Public Library, 200 W. 9th Street, Imperial, CA 92251.

City of Rancho Mirage Public Library, 42–520 Bob Hope Drive, Rancho Mirage, CA 92270.

Glen Avon Library, 9244 Galena Street, Riverside, CA 92509.

[1] A loop is a segment of pipeline that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

[2] A lateral pipeline typically takes gas from the main system to deliver it to a customer, local distribution system, or another interstate transmission system.

[3] A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

Palo Verde District Library, 701 Silver Spur Road, Rollins Hills Estates, CA 90274.

Additional information about the Project is available from the FERC'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* 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 FERC, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that 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. To register for this service, go to the eSubscription link on the FERC Internet Web site.

Information concerning the involvement of the CSLC in the EIS/EIR process may be obtained from Tom Filler, Project Manager, at (916) 574–1938, or on the CSLC Internet website at *http://www.slc.ca.gov.*

Information concerning the proposed land use plan amendment and the involvement of the BLM in the EIS/EIR and plan amendment process may be obtained from Lynda Kastoll, Project Manager, at (760) 337–4421. The U.S. Environmental Protection Agency's publication of the Notice of Availability/Completion of the final EIS/EIR/plan amendment in the **Federal Register** initiates a 30-day protest period on the plan amendment. Instructions for filing a protest can be found in section 1.7.7 of the final EIS/EIR/plan amendment.

The CSLC is expected to consider certification of the final EIS/EIR/plan amendment and act on North Baja's application at a regularly scheduled meeting in mid-2007. Interested parties will be notified of the date, time, and location of the meeting. If you have any questions regarding the CSLC hearing, or wish to testify, please contact Tom Filler at the number above.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11647 Filed 6–15–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2004–0109; FRL–8129–3]

Draft List of Initial Pesticide Active Ingredients and Pesticide Inerts to be Considered for Screening under the Federal Food, Drug, and Cosmetic Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA) directs EPA to develop a chemical screening program using appropriate validated test systems and other scientifically relevant information to determine whether certain substances may have hormonal effects. In September 2005, EPA published its approach for selecting the initial list of chemicals for which testing will be required under the Endocrine Disruptor Screening Program (EDSP). This document presents the draft list of the first group of chemicals that will be screened in the Agency's EDSP. The draft list was produced using the approach described in the September 2005 notice, and includes chemicals that the Agency, in its discretion, has decided should be tested first, based upon exposure potential. This list should not be construed as a list of known or likely endocrine disruptors. Nothing in the approach for generating the initial list provides a basis to infer that by simply being on this list these chemicals are suspected to interfere with the endocrine systems of humans or other species, and it would be inappropriate to do so. The first group of chemicals identified for testing includes pesticide active ingredients and High Production Volume (HPV) chemicals used as pesticide inerts. After considering comments on this draft list of chemicals, EPA will issue a second **Federal Register** notice containing the final list of chemicals. This document does not describe other aspects of the EDSP such as the administrative procedures EPA will use to require testing, the validated tests and battery that will be included in the EDSP, or the timeframe for requiring the testing or receiving the data. These topics will be addressed in subsequent notices published in the **Federal Register**.

DATES: Comments must be received on or before September 17, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2004–0109, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2004–0109. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2004–0109. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects

or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at http://www.epa.gov/epahome/dockets.htm.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT:

Linda Phillips, Office of Science Coordination and Policy (7203M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–1264; e-mail address: *phillips.linda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you produce, manufacture, use, consume, work with, or import pesticide chemicals. To determine whether you or your business may be affected by this action, you should carefully examine section 408(p) of FFDCA, 21 U.S.C. 346a(p). Potentially affected entities, using the North American Industrial Classification System (NAICS) codes to assist you and others in determining whether this action might apply to certain entities, may include, but are not limited to:

- Chemical manufacturers, importers and processors (NAICS code 325), e.g., persons who manufacture, import or process chemical substances.
- Pesticide, fertilizer, and other agricultural chemical manufacturers (NAICS code 3253), e.g., persons who manufacture, import or process pesticide, fertilizer and agricultural chemicals.
- Scientific research and development services (NAICS code 5417), e.g., persons who conduct testing of chemical substances for endocrine effects.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Scope of comments sought.* As discussed in more detail later in this document, the Agency has already sought and considered comments on the priority-setting approach before issuing the final approach in 2005 (70 FR 56449, September 27, 2005), which was used to identify the initial group of chemicals presented today. As such, the Agency is not seeking comment on the particulars of the approach used. Since FFDCA requires that all pesticides be screened under the EDSP, any suggestions to add a chemical to the list should be based on the application of the Agency's approach and supported with additional information. Should you have more recent information that affects the Agency's application of the approach, e.g., chemical is no longer manufactured or sold in the United States as a pesticide or used as an inert in pesticides, please provide the supporting information and data with your comment.

As indicated in the September 2005 **Federal Register** notice, any company subject to a testing requirement under Tier 1 may assert (supported by appropriate data) during the comment period for the draft list that the chemical is an endocrine disruptor and that the Tier 1 EDSP screening is unnecessary. EPA does not intend to permit chemicals on this list to bypass Tier 1 screening and move directly to Tier 2 testing without appropriate data to support such an action.

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

3. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at the estimate.

vi. Provide specific examples to illustrate your concerns, and suggested alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Introduction

A. What Action is the Agency Taking?

Based on the approach described in the **Federal Register** notice of September 27, 2005 (70 FR 56449) (FRL–7716–9), EPA is announcing the draft list of the first group of chemicals that will be screened in the Agency's Endocrine Disruptor Screening Program (EDSP).As required by FFDCA, all pesticides must eventually be screened under the EDSP, and this first group is simply a starting point.Because EPA developed this draft list of chemicals based upon exposure potential, it

should not be construed as a list of known or likely endocrine disruptors, and it would be inappropriate to do so. Nothing in the approach for generating the initial list provides a basis to infer that by simply being on this list these chemicals are suspected to interfere with the endocrine systems of humans or other species. The first group of chemicals to be tested consists of chemicals that section 408(p) requires be screened, i.e., pesticide active ingredients and chemicals used as pesticide inert ingredients that are also High Production Volume (HPV) chemicals. Following consideration of comments on this draft list of chemicals, EPA will issue a second **Federal Register** notice containing the final list of chemicals. This document does not describe other aspects of the EDSP such as the administrative procedures EPA will use to require testing, the validated tests and battery that will be included in the EDSP, or the timeframe for requiring the testing or receiving the data. These topics will be addressed in subsequent notices published in the **Federal Register**.

EPA anticipates that it may, in the future, modify its approach to selecting chemicals for screening. Information and factors that EPA may consider in selecting chemicals could include: Public input; the results of testing chemicals on the initial list; management considerations to increase the integration of screening with other regulatory activities; implementation considerations flowing from a decision to extend screening to additional categories of chemicals (e.g., nonpesticide chemical substances); and the availability of new priority-setting tools (e.g., High Throughput Pre-Screening (HTPS) or Quantitative Structure Activity Relationship (QSAR) models).

EPA developed its EDSP in response to the Congressional mandate in section 408(p) of FFDCA to ''develop a screening program. . .to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effects as [EPA] may designate'' (21 U.S.C. 346a(p)). When carrying out the program, the statute requires EPA to ''provide for the testing of all pesticide chemicals.'' The statute also provides EPA with discretionary authority to ''provide for the testing of any other substance that may have an effect that is cumulative to an effect of a pesticide chemical if the Administrator determines that a substantial population may be exposed to such a substance.'' In addition, section 1457 of the Safe Drinking Water Act (SDWA) provides EPA with discretionary authority to provide for testing, under the FFDCA 408(p) screening program, ''of any other substances that may be found in sources of drinking water if the Administrator determines that a substantial population may be exposed to such substance.''

The purpose of this document is to announce the draft initial list of chemicals to be screened in the Agency's EDSP. EPA used an approach based on the priority-setting approach described in the September 2005 **Federal Register** notice. The approach focused on human exposure-related factors rather than using a combination of exposure- and effects-related factors. The approach did not include a literature search for or consideration of any data on potential endocrine effects. It is therefore inappropriate to infer that by simply being on this list, these chemicals are suspected to interfere with the endocrine systems of humans or other species. As described in detail in the September 2005 **Federal Register** notice, for the approach EPA:

- Focused chemical selection on the subset of chemicals for which testing is required (i.e., pesticide chemicals).
- Used exposure data as the basis for chemical selection.
- Deferred consideration of nominations from the public.
- Excluded mixtures.
- Excluded chemicals that are no longer produced or used in the U.S.

The approach described in the September 2005 **Federal Register** notice further indicated that the following would be excluded from the initial list of chemicals for screening.

- Substances anticipated to have low potential to cause endocrine disruption (e.g., certain Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) List 4 inerts, most polymers with number average molecular weight greater than 1,000 daltons, strong mineral acids, and strong mineral bases).
- ''Positive control'' substances that are being used by EPA to validate screening assays proposed for the Tier 1 battery. See Unit IV.G. for more information.

EPA's general focus in the approach for the initial list was on pesticide active ingredients and inerts with relatively greater potential for human exposure. The emphasis on human exposure does not necessarily mean that the list will not contain substances that may not also have potentially high levels of environmental exposure to ecological receptors. This **Federal Register** document presents the draft list of chemicals in alphabetical order. An ordinal ranking of chemicals selected using the approach was not created.

B. What is the Agency's Authority for Taking this Action?

Section 408(p) of FFDCA requires EPA to ''develop a screening program, using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect as [EPA] may designate.'' (21 U.S.C. 346a(p)). The statute generally requires EPA to ''provide for the testing of all pesticide chemicals.'' (21 U.S.C. 346a(p)(3)). However, EPA is authorized to exempt a chemical, by order upon a determination that ''the substance is anticipated not to produce any effect in humans similar to an effect produced by a naturally occurring estrogen.'' (21 U.S.C. 346a(p)(4)). ''Pesticide chemical'' is defined as ''any substance that is a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act, including all active and inert ingredients of such pesticide.'' (21 U.S.C. 321(q)(1)).

III. Background

EPA initially set forth the EDSP in the August 11, 1998 **Federal Register** notice (63 FR 42852) (FRL–6021–3), and solicited public comment on the program in the December 28, 1998, **Federal Register** notice. The program set forth in these notices was based on the recommendations of the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), which was chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2, section 9(c). The EDSTAC was comprised of members representing the commercial chemical and pesticides industries, Federal and State agencies, worker protection and labor organizations, environmental and public health groups, and research scientists.

EDSTAC recommended that EPA's program address both potential human and ecological effects; examine effects on estrogen, androgen, and thyroid hormone-related processes; and include non-pesticide chemicals, contaminants, and mixtures in addition to pesticides (Ref. 1). Based on these recommendations, EPA developed a two-tiered approach, referred to as the EDSP. The purpose of the Tier 1 screening (referred to as ''screening'') is to identify substances that have the potential to interact with the estrogen, androgen, or thyroid hormone systems using a battery of assays. The purpose of Tier 2 testing (referred to as ''testing'')

is to identify and establish a dose-response relationship for any adverse effects that might result from the interactions identified through the Tier 1 assays. EDSTAC also recommended that EPA establish a priority-setting approach for choosing chemicals to undergo Tier 1 screening. EPA described this approach in the **Federal Register** of September 2005. More information on EPA's priority setting approach for the EDSP is available at *http://www.epa.gov/scipoly/oscpendo/prioritysetting*.

EPA currently is implementing its EDSP in three major parts that are being developed in parallel and with substantial work on each well underway.

1. *Assay validation*. Under FFDCA section 408(p), EPA is required to use ''appropriate validated test systems and other scientifically relevant information'' to determine whether substances may have estrogenic effects in humans or other endocrine effects as the Administrator may designate. EPA is validating assays that are candidates for inclusion in the Tier 1 screening battery and Tier 2 tests, and will select the appropriate screening assays for the Tier 1 battery based on the validation data. Validation is defined as the process by which the reliability and relevance of test methods are evaluated for the purpose of supporting a specific use. The Tier 1 screening battery is expected to complete peer review and be ready for use early in 2008. The status of each assay can be viewed on the EDSP website in the Assay Status table: *http://www.epa.gov/scipoly/oscpendo/pubs/assayvalidation/status.htm.*

2. *Priority setting*. EPA described its priority setting approach for the first group of pesticide chemicals to be tested in the Federal Register of September 2005, and this document today announces the draft initial list of chemicals to undergo Tier 1 screening. The Agency expects to finalize this initial list of chemicals early in 2008. More information on EPA's priority setting approach for the EDSP is available at *http://www.epa.gov/scipoly/oscpendo/prioritysetting*.

3. *Procedures*. EPA intends to commence Tier 1 screening of the first group of pesticide chemicals by issuing test orders under FFDCA section 408(p) to chemical companies identified as the manufacturer or processor of the identified chemicals, including the pesticide registrant. EPA is developing a draft implementation policy that will describe the procedures that EPA will use to issue orders, the procedures that order recipients would use to respond to the order, how data protection and compensation will be addressed in the test orders, and other related procedures or policies. In addition, EPA is developing a draft template for the test order and a draft information collection request (ICR) to obtain the necessary clearances under the Paperwork Reduction Act (PRA). The Agency expects to seek public comment on the draft implementation policy and related documents late spring or early summer 2007, and after considering those comments, EPA expects to finalize the policy by the end of 2007.

Based on the current timing for each of the three major parts of the EDSP, the Agency intends to initiate the EDSP Tier 1 screening for the first group of pesticide chemicals early in 2008, at which time the final Tier 1 screening battery and the final procedures will be available. This document deals only with the draft list of chemicals initially selected to go through screening in the Tier 1 assays. As indicated in Unit II.A, EPA intends to address the other aspects of the EDSP in subsequent notices published in the **Federal Register**.

IV. Development of the Initial List of Chemicals

The following sections summarize the approach that was used to develop the draft initial list of chemicals, which is described in more detail in the September 2005 **Federal Register** notice. Again, it would be inappropriate to construe the draft initial list of chemicals as a list of known or likely endocrine disruptors. Nothing in the approach for generating the initial list provides a basis to infer that by simply being on this list, these chemicals are suspected to interfere with the endocrine systems of humans or other species.

A. Universe of Chemicals

EPA indicated in the September 27, 2005 (70 FR 56449) (FRL–7716–9) **Federal Register** notice that the universe of chemicals to be considered would include: (1) Pesticide active ingredients and (2) high production volume (HPV) chemicals that are also pesticide inerts.

1. *Pesticide active ingredients.* The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) defines a pesticide active ingredient as a chemical contained in pesticide products that prevents, destroys, repels, or mitigates any pest, or is a plant regulator, defoliant, desiccant, or nitrogen stabilizer. (7 U.S.C. 136(2)(u)). The universe of pesticide active ingredients which are required to be screened for their potential to adversely affect the endocrine system corresponds to the active ingredients EPA has scheduled for review in its ''registration review'' program. (FIFRA requires EPA periodically to review the registration of all pesticide products, which the Office of Pesticide Programs (OPP) will implement through a program called ''registration review.'' It should be noted that OPP may group similar active ingredients together, e.g., 2,4-D esters, salts, and amines, in ''cases'' that are evaluated at the same time. The EDSP, however, will focus on screening individual active ingredients.) The registration review schedule identifies all pesticide active ingredients that are used in currently registered products and indicates when they will be addressed in EPA's periodic registration review program. The draft registration review schedule was posted on EPA's website in August 2005 (Ref. 2). The draft schedule listed all registration review cases and pesticide active ingredients as of September 30, 2004. The draft schedule listed 666 registration review cases, comprising 1,056 active ingredients. Only those pesticide active ingredients that appear on this draft schedule were considered for generating the initial list of chemicals to undergo testing in the EDSP. The list is consistent with the final registration review schedule posted in October 2006. The principal difference between the draft and the final schedule is the inclusion of new active ingredients contained in newly registered pesticides as of September 30, 2005. The Agency does not expect any of the newly added active ingredients to be found in multiple exposure pathways. There are currently 678 registration review cases, comprising 1,077 active ingredients. These numbers will change annually as registration review schedule updates are announced.

2. *High production volume pesticide inerts*. HPV chemicals are those substances that are not pesticide active ingredients and that are produced or imported into the U.S. in amounts greater than or equal to one million pounds per year. The list of HPV chemicals is based on the non-confidential list of 2002 Toxic Substances Control Act (TSCA) Inventory Update Rule (IUR) chemicals (Ref. 3).

Pesticide inert chemicals are defined as any ingredients in pesticide product formulations other than the active ingredient. (7 U.S.C. 136(2)(m)). OPP maintains an inventory of pesticide inert chemicals that are categorized into the following four lists (Ref. 4):

- *List 1--Inert Ingredients of Toxicological Concern*. Any product

containing a List 1 ingredient must include the label statement:

This product contains the toxic inert ingredient (name of inert).

- *List 2--Potentially Toxic Inert Ingredients/High Priority for Testing Inerts*. The substances on this list may be structurally similar to chemicals known to be toxic; some have data suggesting a concern.
- *List 3--Inerts of Unknown Toxicity*. Inert ingredients on this list have not yet been determined to be of known potential toxicological concern nor have they been determined to be of minimal concern. These substances will continue to be evaluated to determine if they merit reclassification to List 1, 2, or 4.
- *List 4--Inerts of Minimal Concern*. This list is subdivided into List 4A (minimal risk inert ingredients) and List 4B (inerts which have sufficient data to substantiate that they can be used safely in pesticide products).

Table 1 presents the number of HPV and pesticide inert chemicals and the number of chemicals that are contained on both lists.

TABLE 1.–HPV AND PESTICIDE INERT CHEMICAL COUNTS

Chemical List	Number of Chemicals
High Production Volume Chemicals[1]	2,708
Pesticide Inert Chemicals	2,775[2]
Overlap of HPV/Pesticide Inert Chemicals	643

[1]Based on the 2002 TSCA IUR.

[2]The number of inert ingredients contained in one or more registered pesticide products as of April 27, 2007. Note that as new products and formulations are registered, and as other products are canceled or reformulated, the number of inert ingredients contained in one or more registered pesticide products can change.

As shown in Table 1, there are a total of 643 chemicals that are both an HPV and pesticide inert chemical. This overlap was identified by matching Chemical Abstract Service (CAS) Registry numbers on each of the lists. Note that the list of pesticide inerts contains 109 chemicals without corresponding CAS numbers. This list of 109 pesticide inert chemicals was reviewed to determine whether any overlap could be identified based on chemical name. Table 2 presents chemical matches that were identified based on name, and also includes the CAS number provided on the HPV list. These chemicals shown in Table 2 were included in the universe of HPV/pesticide inert overlap chemicals considered for EDSP screening as shown in Table 1 (Ref. 5).

TABLE 2.—ADDITIONAL CHEMICALS INCLUDED IN THE UNIVERSE OF HPV/PESTICIDE INERT OVERLAP CHEMICALS

HPV CAS Number	HPV Name	Inert Name
67784901	Fatty acids, coco, reaction products with 2– [(2–aminoethyl) amino] ethanol	Fatty acids, coco, reaction products with 2–[(2–aminoethyl) amino] ethanol, alkylation products with methyl acrylate, sodium salts
68442091	Naphthalenesulfonic acid, sodium salt, isopropylated	Naphthalenesulfonic acid, isopropylisohexyl–, sodium salt

B. Approach for Selecting the Initial List of Chemicals to Undergo Screening

The following sections describe the approach that was used for selecting the initial list of chemicals to undergo screening, which is described in more detail in the September 2005 **Federal Register** notice. It is important to note that the approach did not include a literature search for or consideration of any data on potential endocrine effects. In fact, nothing in the approach for generating the initial list provides a basis to infer that by simply being on this list, these chemicals are suspected to interfere with the endocrine systems of humans or other species, and it would be inappropriate to make any such references.

1. *Pesticide active ingredients approach*. EPA applied the approach outlined below and described in detail in the September 2005 **Federal Register** notice. EPA used several groups of data to identify pesticide active ingredients to include on the initial list of chemicals for screening. These data focus on the potential for human exposure by different pathways, including those resulting from:

i. Consumption of food containing pesticide residues (i.e., food pathway);

ii. Consumption of drinking water containing pesticide residues (i.e., water pathway);

iii. Residential use of pesticide products (i.e., residential use pathway); and/or

iv. Occupational contact with pesticide–treated surfaces (i.e., occupational exposure pathway).

The data sources analyzed for each pathway are described in Unit IV.C. For each of the four pathways, EPA used the most current data available from each data source to identify active ingredients. As indicated in the September 2005 **Federal Register** notice, these data sources were selected to provide occurrence/usage data on a broad range of pesticide chemicals and across a wide geographical scope. Although the final selected data sources do have limitations, EPA believes that these data sources are suitable for identifying pesticide active ingredients likely to be among those having either potentially widespread or relatively higher levels of human exposure than would be expected for other active ingredients. These data sources were not used to create a definitive, scientifically rigorous list of pesticide chemicals to which the public is the most highly exposed. Nor did EPA create quantitative exposure estimates for this analysis using these databases.

In accordance with the approach described in the September 2005**Federal Register** notice, EPA considered pesticide active ingredients that indicated likely exposure via multiple pathways a higher priority for screening. Substances having potential exposure through all four pathways were considered the highest priority for inclusion on the draft list of chemicals for screening. Chemicals having potential exposure via three pathways were considered next highest in priority. For the purposes of further establishing priorities for pesticide active ingredients in three pathways, greater priority was given to chemicals

having potential exposure via the food pathway, followed by the occupational pathway (i.e., two of the three exposure pathways had to be food and occupational exposure to be included on the draft list of chemicals for screening). Specific details on EPA's approach for selecting pesticide active ingredients are presented in Unit VI. of the September 2005 **Federal Register** notice. In addition, a detailed summary of the analyses performed for each data source for pesticide active ingredients are available in the Docket (Ref. 6).

2. *High production volume pesticide inerts approach*. EPA used a similar approach to identify HPV/pesticide inert chemicals to be included in the initial list for screening. In general, EPA had more extensive information available to assess potential exposure to pesticide active ingredients than to assess HPV/pesticide inert chemical exposure. In addition, more extensive information was available on pesticide active ingredient usage (including both agricultural and residential) than was available for HPV/pesticide inert chemicals (including both pesticidal and nonpesticidal uses of those same substances). For these reasons, the specific pathways and data sources EPA identified for selecting an initial set of HPV/pesticide inert chemicals for endocrine disruptor screening differed somewhat from those for selecting pesticide active ingredients.

For HPV/pesticide inert chemicals, EPA applied the approach outlined below and described in detail in the September 2005 **Federal Register** notice. EPA used several groups of data to identify HPV/pesticide inert chemicals to include on the initial list of chemicals for screening. These data focus on indicators of potential human exposure using the following types of monitoring data:

i. Human biological samples (i.e., human biological monitoring pathway);

ii. Ecological tissues that have human food uses (e.g., fish tissues) (i.e., ecological biological pathway);

iii. Drinking water (i.e., drinking water pathway); and/or

iv. Indoor air (i.e., indoor air pathway).

The data sources analyzed for each pathway are described in Unit IV.D. For each of these four pathways, EPA reviewed the most current existing data available from each data source to identify HPV/pesticide inert chemicals. As with pesticide active ingredients, these data sources were selected to provide occurrence data on a broad range of HPV/pesticide inert chemicals across a wide geographical scope. Although the final selected data sources do have limitations, EPA believes that these data sources are suitable for identifying HPV/pesticide inert chemicals likely to be among those having either potentially widespread or higher levels of human exposure than would be expected for other HPV/pesticide inert chemicals. These data sources were not used to create a definitive, scientifically rigorous list of HPV/pesticide inert chemicals to which the public is the most highly exposed. Nor did EPA use these databases to create quantitative exposure estimates in this analysis.

In accordance with the approach described in the September 2005 **Federal Register** notice, EPA considered HPV/pesticide inert chemicals present in multiple pathways a higher priority for screening. Substances having potential exposure through all four pathways were considered the highest priority for inclusion on the draft list of chemicals for screening. Chemicals having potential exposure via three pathways were considered next highest in priority. For the purposes of further establishing priorities for HPV/pesticide inert chemicals in three pathways, greater priority was given to chemicals observed in human biological monitoring data (i.e., one of the three exposure pathways had to be human biological monitoring to be included on the draft list of chemicals for screening). Specific details on EPA's priority setting approach for selecting HPV/pesticide inert chemicals are presented in Unit VII. of the September 2005 **Federal Register** notice. In addition, a detailed summary of the analyses performed for each data source for high production volume pesticide inerts are available in the Docket (Ref. 7).

C. Pesticide Active Ingredients Data Sources

The pesticide active ingredient data sources analyzed are briefly described below. Detailed data source summaries were prepared for each data source and are available in the Docket (Ref. 8). In addition, each of these data sources are described in the September 2005 **Federal Register** notice.

1. *Food pathway*. Relevant data were extracted from the following data sources to determine the presence of pesticide active ingredients in food containing pesticide residues that may be consumed:

- Continuing Survey of Food Intake by Individuals (CSFII).
- U.S. Department of Agriculture's Pesticide Data Program (USDA PDP).
- U.S. Food and Drug Administration (FDA) Pesticide Monitoring Database.

EPA used the most recent CSFII to develop a list of the top 20 foods consumed in the U.S., in terms of the mean daily consumption by the general population. The list was derived using CSFII data in conjunction with recipe translations that appear in the revised Food Commodity Intake Database (FCID) (Ref. 9). The FCID can be reviewed at *http://www.ars.usda.gov/Services/docs.htm?docid=14514*. The list of top 20 foods can be found in the September 2005 **Federal Register** notice. Having identified the top 20 raw agricultural foods, EPA identified the pesticide active ingredients detected on these foods using information collected by two Federal agency monitoring programs, the USDA PDP and the Surveillance Monitoring Program conducted by FDA's Center for Food Safety and Applied Nutrition. Additional information can be found at *http://www.ams.usda.gov/science/pdp/index.htm*. Additional information on the FDA program appears at *http://www.cfsan.fda.gov/~dms/pesrpts.html*. Pesticide active ingredients that were detected in any of the top foods, as reported by the PDP or FDA Surveillance Monitoring Program sources, were considered for priority setting purposes.

2. *Water pathway*. Relevant data were extracted from the following data sources to characterize the potential presence of pesticide active ingredients in drinking water:

- EPA Pesticides in Ground Water Database (PGWDB).
- EPA Chemical–Specific Monitoring Data.
- United States Geological Survey (USGS)/EPA Reservoir Monitoring Study.
- Environmental Monitoring and Assessment Program (EMAP).
- National Sediment Quality Database: 1980 to 1999 (or National Sediment Inventory (NSI)) Sediment Data.
- National Contaminant Occurrence Database (NCOD).
- National Stream Quality Accounting Network (NASQAN) Surface Water and Sediment Data.
- National Water Quality Assessment (NAWQA) Ground Water, Surface Water, and Sediment Data.
- USDA Pesticide Data Program (PDP) Water Data.

i. *EPA Pesticides in Ground Water Database (PGWDB)*. The PGWDB is a collection of ground water monitoring studies conducted by Federal, State and local governments; the pesticide industry; and private institutions between 1971–1991. The PGWDB contains pesticide data from monitoring

of untreated ground water. Further details can be found in ''EPA Pesticides in Ground Water Database, A Compilation of Monitoring Studies: 1971–1991 National Summary'' (Ref. 10).

ii. *EPA Chemical–Specific Monitoring Data*. Pesticide registrants have conducted and submitted to the Agency targeted surface water and ground water monitoring studies for approximately 50 pesticide active ingredients. In implementing its approach for selecting the initial list of chemicals for screening, EPA reviewed these chemical–specific monitoring data sources to determine if they contain information for pesticide active ingredients for which data from other water monitoring data sources were not available.

iii. *United States Geological Survey (USGS)/EPA Reservoir Monitoring Study*. The USGS/EPA Reservoir Monitoring study contains information for 178 different pesticides and degradation products in samples of raw water (at the intake point) and from finished drinking water (at the tap prior to entering the distribution system) collected in 1999 and 2000. Additional information on the USGS/EPA Reservoir Monitoring Study can be found in ''Pesticides in Select Water Supply Reservoirs and Finished Drinking Water, 1990–2000: Summary of Results from a Pilot Monitoring Program'' (Ref. 11).

iv. *Environmental Monitoring and Assessment Program (EMAP)*. EMAP is an EPA research initiative that collected sediment samples in 18 states at various times between 1990 and 1998. EMAP contains approximately 397 individual data sets. Applicable EMAP sediment data sets identified and included in the analysis are described in the Data Manipulation Summary for Pesticide Active Ingredients (Ref. 6). Further details can be found at:*http://www.epa.gov/emap/*.

v. *National Sediment Inventory (NSI)*. EPA's Office of Science and Technology (OST) initiated the NSI to document the composition of sediment in rivers, lakes, oceans, and estuaries. The NSI includes data collected by a variety of Federal, State, regional, local, and other monitoring programs from 1980 through 1999. It includes over 4.6 million analytical observations for over 50,000 monitoring stations across the country of sediment chemistry, tissue residues, and sediment toxicity data. EPA used both sediment and sub–sediment data from the NSI for the purpose of setting priorities for EDSP. Further details on the NSI database and the National Sediment Quality Survey, which the NSI was developed to support, can be found at:*http://www.epa.gov/waterscience/cs/nsidbase.html*.

vi. *National Drinking Water Chemical Occurrence Database (NCOD)*. NCOD provides a library of water sample analytical data (or ''samples data'') that EPA uses for analysis, rulemaking, and rule evaluation. The drinking water sample data, collected at Public Water Systems, are for both regulated and unregulated contaminants. Further details can be found at:*http://www.epa.gov/safewater/data/ncod/index.html*.

vii. *National Stream Quality Accounting Network (NASQAN) Data*. The NASQAN, a monitoring and data collection program conducted by the USGS, has focused on monitoring the water quality of four of the nation's largest river systems: the Mississippi, the Columbia, the Colorado, and the Rio Grande since 1995. A network of over 50 stations monitors the concentrations of a broad range of chemicals including pesticides, major ions, and trace elements. NASQAN contains data for over 70 chemicals. EPA used both surface water and sediment data from the NASQAN for the purposes of setting priorities for EDSP. Further details can be found at:*http://water.usgs.gov/nasqan/*.

viii. *The National Water Quality Assessment Program (NAWQA)*. The NAWQA Program was designed to study 60 of the Nation's most important river basins and aquifer systems to provide both short–term information necessary for today's water–resource management decisions, and the long–term information needed for policy decisions. EPA used surface water, ground water, and sediment data from the NAWQA for the purposes of setting priorities for EDSP. Further details can be found at:*http://water.usgs.gov/nawqa/*.

ix. *USDA Pesticide Data Program (PDP) Water Data*. The USDA PDP was designed by USDA in 1991 to collect data on pesticide residues consumed in the U.S. PDP samples are collected as close as possible to the time of consumption. PDP has tested over 50 different commodities, including drinking water, for more than 290 pesticides. Further details can be found at:*http://www.ams.usda.gov/science/pdp/index.htm*.

Pesticide active ingredients that were detected in monitoring samples from any of the water data sources described in this section were considered for priority setting purposes for the water exposure pathway.

3. *Residential use pathway*. Human exposure to pesticides may occur as the result of use of pesticidal products in and around homes, schools, businesses, public areas, golf courses, and similar sites. Such use patterns, collectively referred to as ''residential use,'' include: Lawn and garden treatments, insect repellents, termite and other indoor insect control, fumigation products, products applied to pets for flea or tick control, household sanitizers and disinfectants, and many more.

EPA obtained pesticide product labeling information from EPA's Labeling and Use Information System (LUIS). These data were used as the primary indicator of pesticides whose use involves potential human exposure by this pathway. Except for products approved only for limited exposure uses, such as rodenticides applied in tamper resistant bait boxes, all currently registered residential use pesticides were considered as having priority with respect to the residential use pathway. The data from the LUIS reports were cross referenced by the Agency with recent Reregistration Eligibility Decisions (REDs). If the RED had recommended cancellation of residential uses, the pesticide was considered to not have residential uses. In such an instance, the pesticide was not included in the residential use pathway.

4. *Occupational exposure pathway*. Relevant data were extracted from the following data sources to identify the potential for post–application exposure to pesticide active ingredients:

- Agricultural Reentry Task Force (ARTF) – Science Advisory Council on Exposure, Policy Number 003.1, Agricultural Transfer Coefficients.
- USDA's National Agriculture Statistics Services (NASS).
- California's Department of Pesticide Regulation (CDPR).

EPA indicated in the approach published in the September 2005 **Federal Register** notice that another source of pesticide use information is AgroTrak™, a product of Doane Marketing Research. EPA did not need to rely on AgroTrak™ data because sufficient data were available from the other publicly available data sources (i.e., NASS and CDPR).

Using the ARTF data, EPA identified 14 work activities/crop categories (e.g., tree fruit crops) having the highest transfer coefficients. EPA then identified specific crops associated with the crop categories to use in conjunction with data available from the USDA's NASS and CDPR data to identify the pesticides used on those crops. More information on NASS pesticide use data can be found at *http://www.pestmanagement.info/nass*. More information on CDPR pesticide usage

data can be found at *http://www.cdpr.ca.gov/docs/pur/purmain.htm*. Pesticide active ingredients that were used on crops having the highest transfer coefficients were considered for priority setting purposes for the occupational exposure pathway.

D. High Production Volume Pesticide Inert Data Sources

The HPV/pesticide inert chemical data sources analyzed are briefly described below. Detailed data source summaries were prepared for each data source and are available in the Docket (Ref. 8). In addition, each of these data sources are described in the September 2005 **Federal Register** notice.

1. *Human biomonitoring exposure pathway*. Relevant data were extracted from the following data sources to determine the presence of HPV/pesticide inert chemicals in human tissues:

- National Health and Nutrition Examination Survey III (NHANES III) Priority Toxicant Reference Range Study for Volatile Organic Compounds.
- Centers for Disease Control and Prevention's National Reports on Human Exposure to Environmental Chemicals (NHANES 1999 to 2002).
- National Human Adipose Tissue Survey (NHATS).
- Total Exposure Assessment Methodology (TEAM) Breath Study.

i. *National Health and Nutrition Examination Survey III (NHANES III) Priority Toxicant Reference Range Study for Volatile Organic Compounds*. The Third NHANES (NHANES III) was conducted between 1988 and 1994 on 33,994 people. Several studies (e.g., high blood pressure, immunization status, nutritional blood measures) were conducted under NHANES III. One study relevant to priority setting was the Priority Toxicant Reference Range Study, previously referenced as Ashley *et al*. (1994) (Ref. 12). This NHANES III article contains relevant human biomonitoring data for over 40 volatile organic compounds (VOCs).

ii. *Centers for Disease Control (CDC) and Prevention's National Reports on Human Exposure to Environmental Chemicals (NHANES 1999 to 2002)*. The U.S. Department of Health and Human Services (HHS), CDC published three reports summarizing NHANES sampling data:

a. First National Report on Human Exposure to Environmental Chemicals (issued in March 2001, Ref. 13).

b. Second National Report on Human Exposure to Environmental Chemicals (issued in March 2003, Ref. 14).

c. Third National Report on Human Exposure to Environmental Chemicals (issued in July 2005, Ref. 15).

Each year's report presents data from prior years, in addition to exposure data collected for current and additional chemicals studied. Overall, these reports provide data for 148 environmental chemicals for the survey years 1999 through 2002. These data were used for EDSP priority setting purposes.

iii. *National Human Adipose Tissue Survey (NHATS)*. NHATS collected and analyzed human adipose tissue specimens to monitor human exposure to potentially toxic chemicals. NHATS provides relevant human biomonitoring data for over 150 chemicals. Data are available for years 1970 through 1987 in 14 journal articles and reports (Refs. 16–29). However, because a standard set of summarized data parameters has not been published, the NHATS data were previously compiled into a database. (See *http://www.epa.gov/scipoly/oscpendo/prioritysetting/database.htm*.) In implementing its approach for selecting the initial list of chemicals for screening, EPA considered chemicals for which geometric means were calculated.

iv. *Total Exposure Assessment Methodology (TEAM) Breath Study*. The TEAM study measured individual exposure through air, food, and water in urban populations in several U.S. cities. The TEAM Study reports the results of eight monitoring studies performed in five communities during different seasons of the year. Breath, personal air, outdoor air, and water samples were collected for 30 VOCs (Refs. 30–32).

HPV/pesticide inert chemicals that were detected in monitoring samples from any of the human biomonitoring databases described in this section were considered for priority setting purposes for the human biomonitoring pathway.

2. *Ecological biomonitoring exposure pathway*. Relevant data were extracted from the following data sources to determine the presence of HPV/pesticide inert chemicals in ecological tissues:

- National Sediment Inventory (NSI) Fish Tissue Data.
- National Fish Tissue Study (NFTS) Data.
- National Water Quality Assessment (NAWQA) Program Aquatic Animal Tissue Data.

i. *National Sediment Inventory (NSI) Fish Tissue Data (NSI Fish Tissue Data)*. This database is described in Unit IV.C.2.v. In implementing its approach for selecting the initial list of chemicals for screening, EPA considered the analytical results for fish tissue samples collected after 1989.

ii. *National Fish Tissue Study (NFTS) Data*. EPA initiated this 4–year study in 2000 to define the national background levels for 265 chemicals in fish, establish a baseline to track the progress of pollution control activities, and identify areas where contaminant levels are high enough to warrant further investigation. More details can be found at: *http://www.epa.gov/waterscience/fishstudy/results.htm*.

iii. *National Water Quality Assessment (NAWQA) Program Aquatic Animal Tissue Data*. This database, which also contains information on surface water and ground water monitoring studies, is described in Unit IV.C.2.viii. NAWQA has recently made aquatic organism tissue data available for a variety of species and tissues. EPA considered NAWQA tissue data for all species and tissue types for EDSP priority setting purposes.

HPV/pesticide inert chemicals that were detected in monitoring samples from any of the ecological biomonitoring databases described in this section were considered for priority setting purposes for the ecological biomonitoring pathway.

3. *Drinking Water Data Exposure Pathway*. Relevant data were extracted from the following data sources to determine the presence of HPV/pesticide inert chemicals in drinking water.

- National Contaminant Occurrence Database (NCOD).
- National Human Exposure Assessment Survey (NHEXAS) Drinking and Tap Water.
- TEAM Drinking Water Data.
- National Stream Quality Accounting Network (NASQAN) Surface Water and Sediment Data.
- National Water Quality Assessment (NAWQA) Ground Water, Surface Water, and Sediment Data.

i. *National Contaminant Occurrence Database (NCOD)*. This database is described in Unit IV.C.2.vi.

ii. *National Human Exposure Assessment Survey (NHEXAS) Drinking and Tap Water*. EPA designed the NHEXAS program to evaluate comprehensive human exposure to multiple chemicals from multiple routes on both a community and regional scale, as well as its association with environmental concentrations and personal activities (Refs. 33–36, 45). Drinking water data and tap water from NHEXAS were used for priority setting purposes for this pathway.

iii. *TEAM Drinking Water Data*. The TEAM study is described in Unit IV.D.1.iv.

iv. *National Stream Quality Accounting Network (NASQAN) Data.* This database, which contains information on surface water monitoring studies, is described in Unit IV.C.2.vii.

v. *National Water Quality Assessment Program (NAWQA).* This database, which contains information on surface water and ground water monitoring studies, is described in Unit IV.C.2.viii.

HPV/pesticide inert chemicals that were detected in monitoring samples from any of the drinking water databases described in this section were considered for priority setting purposes for the drinking water exposure pathway.

4. *Indoor Air Exposure Pathway.* Relevant data were extracted from the following data sources to determine the presence of HPV/pesticide inert chemicals in indoor air:

- EPA/Office of Research and Development (ORD) Journal Articles.
- NHEXAS – Indoor and Personal Air Data.
- TEAM Air Data.

i. *EPA/Office of Research and Development (ORD) Journal Articles.* The following eight EPA/ORD–authored journal articles and reports provide indoor and personal air monitoring data: Brown *et al.* (1994), Daisey *et al.* (1994), Kelly *et al.* (1994), Immerman and Schaum (1990), Samfield (1992), Shah *et al.* (1988), Sheldon *et al.* (1992), and Shields *et al.* (1996) (Ref. 37–44). In implementing its approach for selecting the initial list of chemicals for screening, EPA excluded the Kelly *et al.* (1994) article, as this article only provides outdoor air data.

ii. *NHEXAS–Indoor and Personal Air Data.* The NHEXAS program was designed to evaluate comprehensive human exposure via indoor and outdoor air to multiple chemicals on a community and regional scale. Samples were collected of both the indoor and outdoor air that people breathe. Preliminary results of Phase I of NHEXAS were reported in 15 journal articles published in 1999. Four of these 15 journal articles provided information that is applicable to indoor air monitoring (Refs. 33–36, 45). In implementing its approach for selecting the initial list of chemicals for screening, EPA considered both NHEXAS indoor and/or personal air samples for EDSP priority setting purposes.

iii. *TEAM Air Data.* The TEAM study is described in Unit IV.D.1.iv. The ORD literature (see Unit IV.D.4.i.) includes all of the indoor air data collected in the TEAM study; therefore, EPA considered TEAM data in implementing its approach for selecting the initial list of chemicals along with the ORD data rather than as a separate source of information.

HPV/pesticide inert chemicals that were detected in monitoring samples from any of the indoor air databases described in this section were considered for priority setting purposes for the indoor air exposure pathway.

E. Integration of Pathway Priorities for Pesticide Active Ingredients

The Agency analyzed the data sources for each pathway to produce four candidate lists of chemicals for potential screening using the endocrine disruptor screening battery. A number of pesticide active ingredients were identified for more than one pathway, and some chemicals appeared only in a single pathway. Table 3 presents the number of unique pesticide active ingredients included on each list.

TABLE 3.—NUMBER OF PESTICIDE ACTIVE INGREDIENTS ON EACH PATHWAY LIST

Exposure Pathway	Number of Unique Pesticide Active Ingredients
Overall Pesticides Combined List	690[1]
Food Pathway	92
Water Pathway	130
Residential Use Pathway	381[2]
Occupational Exposure Pathway	564

[1]One active ingredient was excluded because its registration was recently canceled; three active ingredients were excluded because they only have import tolerances (i.e., there are no domestic registrations for these active ingredients).

[2]Three hundred and eighty-one active ingredients were identified with residential uses based on the output of the LUIS report. These data were used to generate the list of active ingredients listed in Table 5. EPA performed a quality assurance review of the 64 chemicals presented in Table 5 to verify residential use.

Table 4 presents the number of pesticide active ingredients according to the number and types of pathways in which they were observed.

TABLE 4.—NUMBER OF PESTICIDE ACTIVE INGREDIENTS ACCORDING TO THE NUMBER OF PATHWAYS IN WHICH THEY WERE OBSERVED

Number (Type) of Pathways	Number of Pesticide Active Ingredients
4 (Food, Water, Residential, Occupational)	28

TABLE 4.—NUMBER OF PESTICIDE ACTIVE INGREDIENTS ACCORDING TO THE NUMBER OF PATHWAYS IN WHICH THEY WERE OBSERVED—Continued

Number (Type) of Pathways	Number of Pesticide Active Ingredients
3 (Food, Water, Occupational)	19

TABLE 4.—NUMBER OF PESTICIDE ACTIVE INGREDIENTS ACCORDING TO THE NUMBER OF PATHWAYS IN WHICH THEY WERE OBSERVED—Continued

Number (Type) of Pathways	Number of Pesticide Active Ingredients
3 (Food, Water, Residential)	0
3 (Food, Residential, Occupational)	17
3 (Water, Residential, Occupational)	33
2 (Food, Water)	1
2 (Food, Residential)	1
2 (Food, Occupational)	22

TABLE 4.—NUMBER OF PESTICIDE ACTIVE INGREDIENTS ACCORDING TO THE NUMBER OF PATHWAYS IN WHICH THEY WERE OBSERVED—Continued

Number (Type) of Pathways	Number of Pesticide Active Ingredients
2 (Water, Residential)	3
2 (Water, Occupational)	40
2 (Residential, Occupational)	175
1 (Food)	4
1 (Water)	6
1 (Residential)	111
1 (Occupational)	230
Total	690

Because there were a large number of chemicals from which to select, it was necessary to establish priorities within the pathways. EPA gave priority to those pesticide active ingredients that appeared in four exposure pathways, followed by those that appeared in three pathways. Further, for pesticide active ingredients appearing in three pathways, EPA gave priority to those where the food pathway was represented because of the potential for widespread exposure to the general population, followed by those where the occupational exposure pathway was represented due to the potential for workers to be highly exposed.

Table 5 presents the draft initial list of 64 pesticide active ingredients to undergo screening in the Tier 1 assays under the EDSP, along with an indication of the pathways in which they appeared. Because this list of pesticide active ingredients was selected on the basis of exposure potential only, it should not be construed as a list of known or likely endocrine disruptors.

TABLE 5.—PESTICIDE ACTIVE INGREDIENTS

Chemical Name	CAS Number	Total Pathways	Food	Water	Residential	Occupational
Chemicals in 4 Pathways						
2,4-D	94757	4	x	x	x	x
Atrazine	1912249	4	x	x	x	x
Benfluralin	1861401	4	x	x	x	x
Bifenthrin	82657043	4	x	x	x	x
Captan	133062	4	x	x	x	x
Carbamothioic acid, dipropyl–, S–ethyl ester	759944	4	x	x	x	x
Carbaryl	63252	4	x	x	x	x
Chlorothalonil	1897456	4	x	x	x	x
Chlorpyrifos	2921882	4	x	x	x	x
Dichlobenil	1194656	4	x	x	x	x
Disulfoton	298044	4	x	x	x	x
Fenvalerate	51630581	4	x	x	x	x
Glyphosate	1071836	4	x	x	x	x
Imidacloprid	138261413	4	x	x	x	x
Malathion	121755	4	x	x	x	x

TABLE 5.—PESTICIDE ACTIVE INGREDIENTS—Continued

Chemical Name	CAS Number	Total Pathways	Food	Water	Residential	Occupational
Metalaxyl	57837191	4	x	x	x	x
Methiocarb	2032657	4	x	x	x	x
Metolachlor	51218452	4	x	x	x	x
Metribuzin	21087649	4	x	x	x	x
Myclobutanil	88671890	4	x	x	x	x
Norflurazon	27314132	4	x	x	x	x
Permethrin	52645531	4	x	x	x	x
Propiconazole	60207901	4	x	x	x	x
Propyzamide	23950585	4	x	x	x	x
Quintozene	82688	4	x	x	x	x
Simazine	122349	4	x	x	x	x
Triadimefon	43121433	4	x	x	x	x
Trifluralin	1582098	4	x	x	x	x
Chemicals in 3 Pathways						
4,7–Methano–1H–isoindole–1,3(2H)–dione, 2–(2–ethylhexyl)–3a,4,7,7a–tetrahydro–	113484	3	x		x	x
Abamectin	71751412	3	x		x	x
Acephate	30560191	3	x		x	x
Aldicarb	116063	3	x	x		x
Allethrin	584792	3	x		x	x
Azinphos–Methyl	86500	3	x	x		x
Carbofuran	1563662	3	x	x		x
Cyfluthrin	68359375	3	x		x	x
Cypermethrin	52315078	3	x		x	x
DCPA (or chlorthal–dimethyl)	1861321	3	x	x		x
Diazinon	333415	3	x	x		x
Dichlorvos	62737	3	x		x	x
Dicofol	115322	3	x	x		x
Dimethoate	60515	3	x	x		x
Endosulfan	115297	3	x	x		x
Esfenvalerate	66230044	3	x		x	x
Ethoprop	13194484	3	x	x		x
Fenbutatin oxide	13356086	3	x		x	x
Flutolanil	66332965	3	x		x	x
Folpet	133073	3	x		x	x
Gardona (cis–isomer)	22248799	3	x		x	x

TABLE 5.—PESTICIDE ACTIVE INGREDIENTS—Continued

Chemical Name	CAS Number	Total Pathways	Food	Water	Residential	Occupational
Iprodione	36734197	3	x	x		x
Linuron	330552	3	x	x		x
Methamidophos	10265926	3	x	x		x
Methidathion	950378	3	x	x		x
Methomyl	16752775	3	x	x		x
Methyl parathion	298000	3	x	x		x
o–Phenylphenol	90437	3	x		x	x
Oxamyl	23135220	3	x	x		x
Phosmet	732116	3	x	x		x
Piperonyl butoxide	51036	3	x		x	x
Propachlor	1918167	3	x	x		x
Propargite	2312358	3	x	x		x
Pyridine, 2-(1-methyl-2-(4-phenoxyphenoxy) ethoxy)-	95737681	3	x		x	x
Resmethrin	10453868	3	x		x	x
Tebuconazole	107534963	3	x		x	x
Total = 64 Pesticide Active Ingredients).						

F. Integration of Pathway Priorities for High Production Volume/Pesticide Inerts

The Agency analyzed the data sources for each HPV/pesticide inert exposure pathway to produce four candidate lists of chemicals for potential screening using the endocrine disruptor screening battery. A number of HPV/pesticide inerts were identified for more than one pathway, and some chemicals appeared only in a single pathway. Table 6 presents the number of unique high production volume pesticide inerts included on each list.

TABLE 6.—NUMBER OF HIGH PRODUCTION VOLUME PESTICIDE INERTS ON EACH PATHWAY LIST

Exposure Pathway	Number of Unique HPV/Inert Chemicals
Overall Combined List	62
Human Biological Monitoring Exposure Pathway	14

TABLE 6.—NUMBER OF HIGH PRODUCTION VOLUME PESTICIDE INERTS ON EACH PATHWAY LIST—Continued

Exposure Pathway	Number of Unique HPV/Inert Chemicals
Ecological Biological Monitoring Exposure Pathway	17
Chemicals in Drinking Water Exposure Pathway	19
Indoor Air Monitoring Exposure Pathway	48

Table 7 presents the number of HPV/pesticide inert chemicals according to the number and types of pathways in which they were observed.

TABLE 7.—NUMBER OF HPV/PESTICIDE INERT CHEMICALS ACCORDING TO THE NUMBER OF PATHWAYS IN WHICH THEY WERE OBSERVED

Number (Type) of Pathways	Number of HPV/ Pesticide Inert Chemicals
4 (Human, Eco, Water, Air)	8
3 (Human, Eco, Water)	1
3 (Human, Eco, Air)	0
3 (Human, Water, Air)	0
3 (Eco, Water, Air)	3
2 (Human, Eco)	0
2 (Human, Water)	1

TABLE 7.—NUMBER OF HPV/PESTICIDE INERT CHEMICALS ACCORDING TO THE NUMBER OF PATHWAYS IN WHICH THEY WERE OBSERVED—Continued

Number (Type) of Pathways	Number of HPV/ Pesticide Inert Chemicals
2 (Human, Air)	2
2 (Eco, Water)	0
2 (Eco, Air)	0
2 (Water, Air)	1

TABLE 7.—NUMBER OF HPV/PESTICIDE INERT CHEMICALS ACCORDING TO THE NUMBER OF PATHWAYS IN WHICH THEY WERE OBSERVED—Continued

Number (Type) of Pathways	Number of HPV/ Pesticide Inert Chemicals
1 (Human)	2
1 (Eco)	5
1 (Water)	5
1 (Air)	34

Because there were a large number of chemicals from which to select, it was necessary to establish priorities within the pathways. In choosing which HPV/pesticide inert chemicals to propose for the initial screening list, EPA gave highest priority to chemicals that appeared in four exposure pathways, followed by chemicals that appeared in three pathways. For those chemicals that appeared in three pathways, EPA gave highest priority to those chemicals appearing in human biological monitoring exposure data.

Table 8 presents the draft initial list of nine HPV/pesticide inert chemicals to undergo screening in the EDSP. Because this list of HPV/pesticide inert chemicals was selected on the basis of exposure potential only, it should not be construed as a list of known or likely endocrine disruptors.

TABLE 8.—HIGH PRODUCTION VOLUME PESTICIDE INERTS

Chemical Name	CAS Number	Total Pathways	Human	Eco	Water	Air
Chemicals in 4 Pathways						
Acetone	67641	4	x	x	x	x
Butyl benzyl phthalate	85687	4	x	x	x	x
Dibutyl phthalate	84742	4	x	x	x	x
Diethyl phthalate	84662	4	x	x	x	x
Dimethyl phthalate	131113	4	x	x	x	x
Di–sec–octyl phthalate	117817	4	x	x	x	x
Methyl ethyl ketone	78933	4	x	x	x	x
Toluene	108883	4	x	x	x	x
Chemical in 3 Pathways						
Isophorone	78591	3	x	x	x	

G. Chemical Substances Deferred from Screening

EPA previously indicated that the following types of chemical substances may be deferred from the initial list of chemicals to undergo screening:

- Certain FIFRA List 4 pesticide inerts (i.e., List 4 inerts are described as ''Inerts of minimal concern'').
- Most polymers with number average molecular weight greater than 1,000 daltons.
- Strong mineral acids and bases.
- Chemicals that are being used as a ''positive controls'' to validate the screening assays.

EPA has examined the 73 chemicals identified by the selection process in light of the criteria for deferral. None of the chemicals selected for initial screening using the approach described in this**Federal Register** notice were categorized as List 4 inerts, high molecular weight polymers, or strong mineral acids or bases. Several have been used as ''positive controls'' in the validation of individual assays by the EDSP. However, none of the chemicals identified as EDSP ''positive controls'' on the draft chemical lists were used in a full battery of Tier 1 screening assays. As a result, none of the chemicals qualify as ''positive controls'' for Tier 1 screening, as a whole. Use of these chemicals in the validation of individual assays by the EDSP does not mean that these chemicals should be characterized as endocrine disruptors at this time. EPA intends to use the results of the battery of Tier 1 assays on this initial list to make a ''weight of the evidence'' determination about a chemical's potential to interact with the endocrine system. Excluding ''positive controls'' used in individual assays from the list of chemicals for initial Tier 1 screening would mean that EPA would not have data for the remainder of the assays in the Tier 1 battery and would not be able to evaluate these chemicals' potential interaction with the endocrine system in the same manner as for all other chemicals, and would not be able to properly evaluate whether these chemicals should proceed to Tier 2 testing. Thus, these chemicals were retained on the list of 73 chemicals for initial screening.

H. Bypassing Tier 1 Screening

As indicated in the September 2005 **Federal Register** notice, any company subject to a testing requirement under Tier 1 may assert (supported by appropriate data) during the comment period for the draft list that the chemical

is an endocrine disruptor and that the Tier 1 EDSP screening is unnecessary. EPA does not intend to permit chemicals on this list to bypass Tier 1 screening and move directly to Tier 2 testing without appropriate data to support such an action.

I. Integration of the Pesticide Active Ingredients and High Production Volume/Inerts Lists

Table 9 presents an alphabetized draft list of the 73 pesticide active ingredients and HPV/pesticide inert chemicals for screening in the EDSP. Because this list of chemicals was selected on the basis of exposure potential only, it should neither be construed as a list of known or likely endocrine disruptors nor characterized as such.

TABLE 9.—DRAFT LIST OF CHEMICALS FOR TIER 1 SCREENING IN THE EDSP

Chemical Name	CAS Number	Pesticide Active Ingredient	HPV/Inert
2,4-D	94757	x	
4,7–Methano–1H–isoindole–1,3(2H)–dione, 2–(2–ethylhexyl)–3a,4,7,7a–tetrahydro–	113484	x	
Abamectin	71751412	x	
Acephate	30560191	x	
Acetone	67641		x
Aldicarb	116063	x	
Allethrin	584792	x	
Atrazine	1912249	x	
Azinphos–Methyl	86500	x	
Benfluralin	1861401	x	
Bifenthrin	82657043	x	
Butyl benzyl phthalate	85687		x
Captan	133062	x	
Carbamothioic acid, dipropyl–, S–ethyl ester	759944	x	
Carbaryl	63252	x	
Carbofuran	1563662	x	
Chlorothalonil	1897456	x	
Chlorpyrifos	2921882	x	
Cyfluthrin	68359375	x	
Cypermethrin	52315078	x	
DCPA (or chlorthal–dimethyl)	1861321	x	
Diazinon	333415	x	
Dibutyl phthalate	84742		x
Dichlobenil	1194656	x	
Dichlorvos	62737	x	
Dicofol	115322	x	
Diethyl phthalate	84662		x
Dimethoate	60515	x	
Dimethyl phthalate	131113		x
Di–sec–octyl phthalate	117817		x
Disulfoton	298044	x	

TABLE 9.—DRAFT LIST OF CHEMICALS FOR TIER 1 SCREENING IN THE EDSP—Continued

Chemical Name	CAS Number	Pesticide Active Ingredient	HPV/Inert
Endosulfan	115297	x	
Esfenvalerate	66230044	x	
Ethoprop	13194484	x	
Fenbutatin oxide	13356086	x	
Fenvalerate	51630581	x	
Flutolanil	66332965	x	
Folpet	133073	x	
Gardona (cis–isomer)	22248799	x	
Glyphosate	1071836	x	
Imidacloprid	138261413	x	
Iprodione	36734197	x	
Isophorone	78591		x
Linuron	330552	x	
Malathion	121755	x	
Metalaxyl	57837191	x	
Methamidophos	10265926	x	
Methidathion	950378	x	
Methiocarb	2032657	x	
Methomyl	16752775	x	
Methyl ethyl ketone	78933		x
Methyl parathion	298000	x	
Metolachlor	51218452	x	
Metribuzin	21087649	x	
Myclobutanil	88671890	x	
Norflurazon	27314132	x	
o–Phenylphenol	90437	x	
Oxamyl	23135220	x	
Permethrin	52645531	x	
Phosmet	732116	x	
Piperonyl butoxide	51036	x	
Propachlor	1918167	x	
Propargite	2312358	x	
Propiconazole	60207901	x	
Propyzamide	23950585	x	
Pyridine, 2-(1-methyl-2-(4-phenoxyphenoxy)ethoxy)-	95737681	x	
Quintozene	82688	x	

TABLE 9.—DRAFT LIST OF CHEMICALS FOR TIER 1 SCREENING IN THE EDSP—Continued

Chemical Name	CAS Number	Pesticide Active Ingredient	HPV/Inert
Resmethrin	10453868	x	
Simazine	122349	x	
Tebuconazole	107534963	x	
Toluene	108883		x
Triadimefon	43121433	x	
Trifluralin	1582098	x	

V. Other Related Future Actions

EPA anticipates that it may, in the future, modify its approach to selecting chemicals for screening. Information and factors that EPA may consider in selecting chemicals could include: Public input; the results of testing chemicals on the initial list; management considerations to increase the integration of screening with other regulatory activities; implementation considerations flowing from a decision to extend screening to additional categories of chemicals (e.g., nonpesticide chemical substances); and the availability of new priority-setting tools (e.g., High Throughput Pre-Screening (HTPS) or Quantitative Structure Activity Relationship (QSAR) models).

As discussed in Unit III., EPA also expects to address other aspects of the EDSP such as the information collection request, the administrative procedures EPA will use to require testing, the validated tests and battery that will be included in the EDSP, and the timeframe for requiring the testing and receiving the data in subsequent notices published in the **Federal Register**.

The Agency intends to conduct a review of the data received from Tier 1 screening both to evaluate individual chemicals and to evaluate whether the EDSP could be improved or optimized, and if so, how. In addition to its own scientists, the Agency will ask an independent expert panel, such as one under the Scientific Advisory Panel (SAP)/Scientific Advisory Board (SAB) to review the results from the Tier 1 screening of the initial group of chemicals. The review may identify methodological issues encountered when this larger set of chemicals are tested by laboratories not involved in the assay validation effort that may lead to further refinements in the protocols for the Tier 1 assays to improve their performance for a wider range of chemicals. The evaluation may also identify interpretive issues, such as a determination that two assays in the screening battery adequately measures the same effect. Other information from the review process may help identify potential issues or areas for improvement, such as whether there is sufficient laboratory capacity or difficulties performing tests in strict adherence with the validated protocols, whether there are issues with the industry's ability to test the identified chemicals, or whether there are any procedural changes that would improve the overall program.

VI. References

The following is a list of the documents that are specifically referenced in this document. These references are available in the docket as identified under **ADDRESSES**, which is the same docket that was used for the final chemical selection approach described in the September 2005**Federal Register** notice. In addition, some documents referenced are only available in docket ID number EPA–HQ–OPPT–2002–0066, which is the docket used for the proposed chemical selection approach described in the **Federal Register** notice of December 30, 2002 (67 FR 79611) (FRL–7286–6). These dockets are cross referenced, but to simplify identifying the specific documents that can be found only in docket ID number OPPT–2002–0066, those references include the appropriate document ID number.

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Summary of Results from a Pilot Monitoring Program. 2001. USGS Open File Report 01-456. (Ref. 5, Docket ID number EPA–HQ–OPPT–2002–0066)

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13. U.S. Centers for Disease Control and Prevention. National Report on Human Exposure to Environmental Chemicals. March 2001. (Ref. 11, Docket ID number EPA–HQ–OPPT–2002–0066)

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List of Subjects

Environmental protection, Chemicals, Endocrine disruptors, Pesticides.

Dated: May 24, 2007.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E7–11711 Filed 6–15–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA–RO4–SFUND–2007–0473; FRL–8328–1]

Holmes Scrap Yard Site; East Spencer, Rowan County, NC; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response concerning the Holmes Scrap Yard Site located in East Spencer, Rowan County, North Carolina.

DATES: The Agency will consider public comments on the settlement until July 18, 2007. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Batchelor. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2007–0473 or Site name Holmes Scrap Yard Superfund Site by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Batchelor.Paula@epa.gov.*
- *Fax:* 404/562–8842/Attn Paula V. Batchelor.

Mail: Ms. Paula V. Batchelor, U.S. EPA Region 4, SD–SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.''

Instructions: Direct your comments to Docket ID No. EPA–RO4–SFUND–2007–0473. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 a.m. until 6:30 p.m. Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Batchelor at 404/562–8887.

Dated: June 1, 2007.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. E7–11688 Filed 6–15–07; 8:45 am]

BILLING CODE 6560–50–P

COUNCIL ON ENVIRONMENTAL QUALITY

Instructions for Implementing Executive Order 13423

AGENCY: Council on Environmental Quality.

ACTION: Notice of availability of E.O. 13423 implementing instructions.

SUMMARY: On January 24, 2007, President Bush signed Executive Order 12343, ''Strengthening Federal Environmental, Energy, and Transportation Management.'' Section 4(b) of the E.O. authorizes the Chairman of the Council on Environmental Quality (CEQ), after consultation with the Office of Management and Budget (OMB) and the agencies, to issue instructions to implement the E.O. CEQ issued the first set of implementing instructions on March 30, 2007.

FOR FURTHER INFORMATION CONTACT: Edwin Pinero, Federal Environmental Executive, 202–456–6224.

(Authority: E.O. 12343, 72 FR 3917)

SUPPLEMENTARY INFORMATION: E.O. 13423 sets goals in the areas of energy efficiency, renewable energy, water consumption intensity, acquisition, management of toxic and hazardous chemicals, waste prevention, solid waste diversion and recycling, sustainable buildings, vehicle fleet management, and electronics stewardship. In addition, the E.O. reinforces the requirement for more widespread use of environmental management systems as the framework in which to manage and continually improve these sustainable practices.

Section 4(b) of the E.O. authorizes the CEQ Chairman, after consultation with OMB and the agencies, to issue instructions to implement the E.O. CEQ issued the first set of implementing instructions on March 30, 2007. These instructions provide additional detail and direction to agencies they work to fulfill the goals and requirements of the E.O. They do not create new requirements beyond the scope of the E.O., however. These instructions should be considered mandatory, and agencies are expected to implement them as part of complying with the E.O. The E.O. implementing instructions can be found on the Office of the Federal Environmental Executive's Web site at *http://www.ofee.gov* or the FedCenter Web site at *http://www.fedcenter.gov/programs/compliance/.*

Dated: June 12, 2007.

James L. Connaughton,

Chairman, Council on Environmental Quality.

[FR Doc. E7–11715 Filed 6–15–07; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 99]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank of the United States (''Ex-Im Bank'') is seeking approval of the proposed information collection described below. Ex-Im Bank provides insurance and guarantees for the financing of exports of goods and services. This collection allows our customers the convenience of online claim filing in connection with a defaulted export transaction. Its use expedites claim filing and provides for simpler, more efficient processing of insurance, guarantee, and working capital claims. As part of its continuing effort to reduce paperwork and respondent burden, Ex-IM Bank invites the general public and other Federal Agencies to comment on the proposed information collection as required by the Paperwork Reduction Act of 1995.

SUPPLEMENTARY INFORMATION: This notice is soliciting comments from the public concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed information collection; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Written comments should be received on or before August 17, 2007 to be assured of consideration.

ADDRESSES: Direct all comments and requests for information to Terry M. Faith, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3607 or (800) 565–3946, x 3607, or *Terry.M.Faith@exim.gov.*

Titles and Form Numbers: Export-Import Bank for the United States Electronic Claim Filing System: Insurance: EIB 07–01A, Medium-Term Bank Guarantee: EIB 07–01B, and Working Capital Guarantee: EIB 07–01C.

OMB Number: None.

Type of Review: Regular.

Need and Use: The proposed information collection provides Ex-Im Bank with information necessary to process the filing of a claim under Ex-IM Bank's Multi-buyer Insurance Policy, Medium Term Guarantee and Working Capital Guarantee programs. The information collection enables claimants to file a claim online, thereby allowing for a simpler, more efficient process.

Affected Public: Insured parties and brokers.

	EIB 07–01A	EIB 07–01B	EIB 07–01C
Estimated Annual Respondents	32	10	10
Estimated Time Per Respondent	1 Hr	1 Hr	1½ Hrs.
Estimated Annual Burden	32 Hrs	10 Hrs	15 Hrs.

Frequency of Response: One form per claim.

Dated: June 11, 2007.

Solomon Bush,

Agency Clearance Officer.

[FR Doc. 07–2977 Filed 6–15–07; 8:45 am]

BILLING CODE 6690–01–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The FDIC, OCC, and OTS (Agencies), as part of their continuing efforts to reduce paperwork and respondent burden, invite the general public and other federal agencies to take this opportunity to comment on a continuing information collection titled ''Affiliate Marketing/Consumer Opt-Out Notices,'' as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). OMB Control numbers for this collection are 3064–0149 (FDIC), 1557–0230 (OCC), and 1550–0112 (OTS).

DATES: Comments must be submitted on or before August 17, 2007.

ADDRESSES: Interested parties are invited to submit written comments by any of the following methods. All comments should refer to the name and number of the collection:

OCC

Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0230, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

FDIC

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *E-mail: comments@fdic.gov*. Include the name and number of the collection in the subject line of the message.
- *Mail:* Steve Hanft (202–898–3907), Clearance Officer, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

OTS

You may submit comments, identified by ''1550–0112,'' by any of the following methods:

- *E-mail address: infocollection.comments@ots.treas.gov*. Please include ''1550–0112'' in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: ''1550–0112.''
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Information Collection Comments, Chief Counsel's Office, Attention: ''1550–0112.''

Instructions: All submissions received must include the agency name and OMB Control Number for this information collection. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*.

In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

A copy of the comments may also be submitted to the OMB Desk Officer for the Agencies, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: *FDIC*—Steve Hanft (address above).

OCC—You may request additional information or a copy of the collection and supporting documentation submitted to OMB by contacting: Mary Gottlieb or Camille Dickerson, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. *OTS:* Marilyn K. Burton, OTS Clearance Officer, at *marilyn.burton@ots.treas.gov,* (202) 906–6467, or facsimile number (202) 906–6518, Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Title: Affiliate Marketing/Consumer Opt-Out Notices.

OMB Number: FDIC, 3064–0149; OCC, 1557–0230; OTS, 1550–0112.

Frequency of Response: On occasion.

Affected Public: Insured financial institutions and their customers.

Estimated Number of Respondents: FDIC—5,236 institutions, 1,088,850 customers; OCC—1,800 institutions, 996,625 customers; OTS—838 institutions, 221,550 customers.

Estimated Time per Response: 18 hours per institution; 5 minutes per customer.

Total Annual Burden: FDIC, 184,623 hours; OCC, 115,452 hours; OTS, 33,546.50 hours.

General Description of Collection: Section 624 of the Fair Credit Reporting Act generally provides that, if a person shares certain information about a consumer with an affiliate, the affiliate may not use that information to make or send solicitations to the consumer about its products or services, unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and the consumer does not opt out. The information collections for which the Agencies seek OMB approval are (1) Notices to consumers of the opportunity to opt-out of solicitations from affiliates, and (2) consumer responses to the opt-out notices.

Request for Comment

Comments are invited on: (a) Whether this collection of information is

necessary for the proper performance of the Agencies' functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start up costs, and costs of operation, maintenance, and purchase of services to provide the information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the Agencies' requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated: June 4, 2007.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Dated at Washington, DC, this 6th day of June, 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: June 12, 2007.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division, Office of Thrift Supervision.

[FR Doc. 07–2989 Filed 6–15–07; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 13, 2007.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Inland Bancorp Holding Company and Inland Financial Acquisitions, Inc., both of Oak Brook, Illinois; to acquire 100 percent of the voting shares of Amerimark Financial Corporation, Countryside, Illinois, and thereby indirectly acquire Amerimark Bank, Villa Park, Illinois.In connection with this application, Inland Financial Acquisitions, Inc., Oak Brook, Illinois, has applied to become a bank holding company by acquiring 100 percent of the voting shares of Amerimark Financial Corporation, Countryside, Illinois, and Amerimark Bank, Villa Park, Illinois.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Mercantile Bancorp, Inc., Quincy, Illinois; to acquire 100 percent of the voting shares of HNB Financial Services, Inc., Hannibal, Missouri, and thereby indirectly acquire HNB National Bank, Hannibal, Missouri.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. TTC Holdings, Inc., San Antonio, Texas, and TTC Holding of Delaware, Inc., Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of The Trust Company, San Antonio, Texas.TTC Holdings, Inc., San Antonio, Texas and TTC Holdings of Delaware, Inc., Wilmington, Delaware also have applied to engage in securities brokerage activities through Presidio Financial Services, Inc., San Antonio, Texas, pursuant to section 225.28(b)(7)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, June 13, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–11692 Filed 6–15–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS) Ad Hoc Work Group on Secondary Uses of Health Data.

Time and Date: June 21, 2007, 3:30 p.m.–5:30 p.m.; June 22, 2007, 9 a.m.–12 p.m.

Place: Natcher Conference Center, National Institutes of Health, 45 Center Drive, Bldg. 45, Bethesda, Maryland 20892.

Status: Open.

Purpose: To plan for upcoming hearings on the use of electronic clinical data for non-clinical (or secondary) use. Clear policies and appropriate practices in this area will facilitate the continued development of emerging health information infrastructures. The NCVHS has been asked by the Office of the National Coordinator for Health Information Technology (ONC) to assist in this effort by developing recommendations on policies needed to ensure appropriate use of clinical data for quality measurement and reporting.

For Further Information Contact: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Debbie Jackson, Senior Program Analyst, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2339, Hyattsville, Maryland 20782, telephone (301) 458–4614 or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: June 7, 2007.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation (OSDP), Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 07–2980 Filed 6–15–07; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers of Disease Control and Prevention

[Docket Number NIOSH 105]

Notice of Request for Public To Submit Comments and Attend Public Meeting

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting and request for public comment on the following draft document: ''NIOSH Hazardous Drugs List Update.''

The documents can found at: *http://www.cdc.gov/niosh/topics/hazdrug/2007publicmeeting.*

Public Comment Period: Comments must be postmarked by September 20, 2007. Comments may be submitted electronically to *niocindocket@cdc.gov* or to Diane Miller, Robert A. Taft Laboratories, 4676 Columbia Parkway, MS C–34, Cincinnati, Ohio 45226. Comments should reference the NIOSH *Docket Number 105.*

Meeting Date and Time: August 28, 2007 9 a.m.–5 p.m.

Place: Marriott Metro Center Hotel, 775 12th Street, NW., Washington, DC 20005.

Purpose of Meeting: To discuss and obtain comments on the draft document, ''NIOSH Hazardous Drugs List Update.'' Special emphasis will be placed on discussion of the following:

(1) The appropriateness and relevancy of the NIOSH definition of Hazardous Drugs;

(2) the appropriateness and relevancy of the drugs that fit the NIOSH definition; and

(3) the appropriateness and relevancy of the drugs that do not fit the NIOSH definition.

Status: The forum will include scientists and representatives from various government agencies, industry, labor, and other stakeholders, and is open to the public, limited only by the space available. Persons interested in providing comments need to notify Diane Miller by July 20, 2007. Ms. Miller can be reached by telephone at (513) 533–8450 or by e-mail at *niocindocket@cdc.gov.* Persons wanting to provide comments will be permitted up to 10 minutes, subject to available time. If additional time becomes available, presenters will be notified. Oral comments given at the meeting will be recorded and included in the docket. Written comments will also be accepted at the meeting. NIOSH will use this information to help assess and revise the definition and/or list of Hazardous Drugs.

Contact for Technical Information: Barbara MacKenzie, NIOSH, Robert A. Taft Laboratories, 4676 Columbia Pkwy. MS C–26, Cincinnati, OH 45226, Telephone 513–533–8132, e-mail *hazardousdrugs@cdc.gov.*

Contact Person for Submitting Comments/Meeting Attendance: Diane Miller, Robert A. Taft Laboratories, 4676 Columbia Parkway, MS C–34, Cincinnati, Ohio 45226, telephone (513) 533–8450. All material submitted to the Agency should reference docket number NIOSH 105.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Dated: June 11, 2007.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–11680 Filed 6–15–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions and Delegation of Authority

Notice is hereby given that I have redelegated to the TANF Regional Program Managers the following authorities vested in me by the Director, Office of Family Assistance (OFA) in the memoranda dated April 17, 2007.

(a) Authorities Delegated

1. The authority to respond to general inquiries about established state, territorial, and tribal programs, to explain existing program policies, and to suggest referrals to other government agencies and private organizations.

2. The authority to request information from state, territorial, and tribal grantees relative to program policies and operations.

3. The authority to deem state TANF plan amendments as complete.

4. The authority to approve or disapprove state requests, as permitted under section 45 CFR 205.56(d), to utilize alternative data-matching sources for the Income Eligibility Verification System (IEVS).

5. The authority to approve or disapprove state IEVS targeting plans, pursuant to section 45 CFR 205.56(a)(1).

6. The authority to issue letters to state and tribal TANF grantees acknowledging their success in achieving work participation rates for a fiscal year.

7. The authority to advise and notify state TANF grantees concerning their applications for caseload reduction credits.

8. The authority to request caseload and expenditure data from state TANF grantees in order to establish a Tribal Family Assistance Grant (TFAG).

9. The authority to approve, request changes, or defer action on ''Letters of Intent'' submitted by tribal applicants who wish to operate a TANF program.

10. The authority to develop TANF technical assistance plans and proposals for the expenditure of technical assistance funds.

11. The authority to request additional information and consult with states and tribes on modifications to TANF corrective compliance plans submitted in response to a penalty determination.

12. The authority to serve as Approving Officials for audit resolution for state and tribal TANF programs, and for tribal NEW programs and Adult Assistance programs that do not involve cost disallowances.

13. The authority to approve Adult Assistance program plans and plan amendments.

14. The authority to approve Federal Financial Participation (FFP) in payments for repairs to homes owned by recipients of assistance under the Adult Assistance programs.

(b) Limitations

1. This delegation of authority shall be exercised under the Department's existing policies on delegations and regulations.

2. The authority to respond to general inquiries relative to established state, territorial, and tribal programs or to inquire about specific grantee policies and operations requires prior consultation with and concurrence of the Director, Division of State TANF

Policy for state TANF and Adult Assistance topics or the Director, Division of Tribal TANF Management for tribal TANF and NEW topics.

3. The authority to deem state TANF plan amendments complete requires prior consultation with and concurrence of the Director, Division of State TANF Policy.

4. The authority to approve/disapprove under 45 CFR 205.55(d), state applications to use alternate sources of information for income and eligibility (i.e., IEVS), requires prior consultation with and the concurrence of the Office of the Deputy Assistant Secretary for Administration, the Director, Division of State TANF Policy, and with the other programs affected by the request.

5. The authority to approve/disapprove under 45 CFR 205.56(a)(1), IEVS targeting plans, requires prior consultation with and the concurrence of the Office of the Deputy Assistance Secretary for Administration and the Director, Division of State TANF Policy.

6. The authority to issue letters to state and tribal TANF grantees acknowledging their success in achieving work participation rates for a fiscal year requires the concurrence of the Director, Division of State TANF Policy for state TANF grantees or the Director, Division of Tribal TANF Management for tribal TANF grantees.

7. The authority to advise and notify state TANF grantees on their caseload reduction credit applications requires prior consultation with the Director, Division of State TANF policy.

8. The authority to request caseload and expenditure data from state TANF grantees relative to establishing a TFAG requires consultation with and concurrence of the Director, Division of Tribal TANF Management.

9. The authority to approve, request changes, or defer action on ''Letters of Intent'' submitted by tribal applicants who wish to operate TANF programs requires prior consultation with and concurrence of the Director, Division of Tribal TANF Management.

10. The authority to implement TANF technical assistance plans and proposals for the expenditure of technical assistance funds requires approval of the Associate Director, TANF in consultation with the Director, Division of State & Territory Management.

11. The authority to request additional information and consult with states and tribes on modifications to TANF corrective compliance plans requires prior consultation with and concurrence of the Director, Division of State TANF Policy for state TANF plans or the Director, Division of Tribal TANF Management for tribal TANF plans.

12. The authority to approve audit resolutions letters requires prior consultation with and the concurrence of the Regional Office Grants Officer and the Director, Division of State TANF Policy for state TANF and Adult Assistance grantees, or the Director, Division of Tribal TANF Management for tribal TANF and NEW grantees.

13. This delegation of authority does not include the authority to make determinations on state appeals concerning audit questions or recommendations by the Department of Health and Human Services (HHS) Audit Agency which involve ACF program practices reviewed under titles I, X, XI, and XVI of the Social Security Act.

14. The authority to approve Adult Assistance Plans and amendments requires prior consultation with and concurrence of the Director, Division of State TANF Policy.

15. The authority to approve FFP in payments for repairs to homes owned by recipients of Adult Assistance requires prior consultation with and concurrence of the Regional Office Grants Officer and Director, Division of State TANF Policy.

(c) Effective Date

This delegation is effective upon the date of signature.

(d) Effect on Existing Delegations

As related to the authorities delegated herein, this delegation of authority supersedes all previous delegations of authority to the TANF Regional Program Managers.

I hereby affirm and ratify any actions taken by the TANF Regional Office Program Managers, Office of Family Assistance, which involved the exercise of the authorities delegated herein prior to the effective date of this delegation.

Dated: June 8, 2007.

Katherine Bradley,

Associate Director, TANF.

[FR Doc. E7–11707 Filed 6–15–07; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0225]

Anthrax Vaccines—Bridging Correlates of Protection in Animals to Immunogenicity in Humans; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Anthrax Vaccines—Bridging Correlates of Protection in Animals to Immunogenicity in Humans.'' The purpose of the public workshop is to discuss possible strategies for bridging animal efficacy data to human immunogenicity data for investigational anthrax vaccines.

Date and Time: The public workshop will be held on November 8, 2007, from 8:30 a.m. to 5 p.m. and November 9, 2007, from 8:30 a.m. to 1 p.m.

Location: Hilton Washington DC North/Gaithersburg, 620 Perry Pkwy., Gaithersburg, MD, 20877, 1–301–977–8900.

Contact Person: Pier Minor, National Institutes of Health/Office of the Director, 6610 Rockledge Dr., Rm. 5WS6, Mail Stop Code 6604, Bethesda, MD 20892, 301–451–6809, FAX: 301–402–0659, e-mail: *minorp@mail.nih.gov*.

Registration: Mail or fax your registration information (including name, title, firm name, address, telephone, and fax number) to the contact person by October 19, 2007. There is no registration fee for the public workshop. Early registration is recommended because seating is limited. There will be no onsite registration.

If you need special accommodations due to a disability, please contact Wenda Minor (see *Contact Person*) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: FDA's Center for Biologics Evaluation and Research, in cooperation with the National Institutes of Health and the Department of Health and Human Services' Office of Biomedical Advanced Research and Development Authority (BARDA) within the Office of the Assistant Secretary for Preparedness and Response, is holding this public workshop. The public workshop will include discussions on: (1) Background information on the ''Animal Rule'' (May 31, 2002, 67 FR 37988), immunological correlates of protection, and the toxin neutralizing assay that will be used to assess anthrax vaccine immunogenicity in animals and humans; (2) animal protection data for anthrax vaccines given both pre- and post-exposure; and (3) human immunogenicity data for anthrax vaccines. The goal of the public workshop is to discuss ways to expedite the development of new anthrax vaccines by providing additional information about bridging animal protection data to human immunogenicity.

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page. A transcript of the public workshop will be available on the Internet at *http://www.fda.gov/cber/minutes/workshop-min.htm*.

Dated: June 11, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–11613 Filed 6–15–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0217]

Licensure of Apheresis Blood Products; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled: Licensure of Apheresis Blood Products. The purpose of the public workshop is to educate industry on the licensure requirements and license application procedures for Platelets, Pheresis; Red Blood Cells; and Plasma collected by automated blood cell separator devices.

Date and Time: The public workshop will be held on August 15, 2007, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the Lister Hill Center Auditorium, Bldg. 38A, National Institutes of Health, 8800 Rockville Pike, Bethesda, MD 20894.

Contact Person: Rhonda Dawson, Center for Biologics Evaluation and Research(HFM–302), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6129, FAX: 301–827–2843, e-mail: *rhonda.dawson@fda.hhs.gov*.

Registration: Mail, fax, or e-mail your registration information (including name, title, firm name, address, telephone and fax numbers) to the contact person by July 31, 2007. There is no registration fee for the public workshop. Early registration is recommended because seating is limited. Registration on the day of the public workshop will be provided on a space available basis beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact Rhonda Dawson at least 7 days in advance.

SUPPLEMENTARY INFORMATION: The public workshop will feature presentations by experts from government and industry. The workshop will include presentations by FDA on: (1) Requirements for licensure, and applicable regulations and guidances, for Platelets, Pheresis; Red Blood Cells; and Plasma (intended for transfusion) collected by apheresis instruments; (2) the FDA managed review process; and (3) failure investigations of apheresis products. Device manufacturers will present an overview of their devices and review validation procedures and quality control processes. Representatives from blood establishments will present case studies of licensing applications. FDA will lead a question and answer session with workshop participants.

Comments: All individuals wishing to submit questions to be addressed at the public workshop should submit written or electronic comments by July 31, 2007, to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm.6–30, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page. A transcript of the public workshop will be available on the Internet at *http://www.fda.gov/cber/minutes/workshop-min.htm*.

Dated: June 11, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–11615 Filed 6–15–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revised information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning FEMA's National Emergency Training Center (NETC) to approve and coordinate the use of the NETC facility for extracurricular training activities.

SUPPLEMENTARY INFORMATION: The National Emergency Training Center (NETC) is a FEMA facility that houses the Emergency Management Institute (EMI) and the National Fire Academy (NFA). NETC provides training and educational programs for Federal, State, and local personnel in hazard mitigation, emergency response and preparedness, fire prevention and control, disaster response, and long-term disaster recovery. Special groups sponsored by EMI, NFA or other FEMA organizations may use NETC facilities to conduct activities closely related to and in direct support of their activities. Such groups include other Federal departments and agencies, groups charted by Congress such as the American Red Cross, State and local governments, volunteer groups, and national and international associations representing State and local governments.

Collection of Information

Title: Approval and Coordination of requirements to use NETC for Extracurricular Training Activities.

Type of Information Collection: Revision of an existing collection.

OMB Number: 1660–0029.

Form Numbers: FEMA Form 75–10, Request for Housing Accommodations, and FEMA Form 75–11, Request for Use of NETC Facility.

Abstract: Data will be obtained from special groups that request to use NETC facilities for extracurricular training

activities. Extracurricular training is training over and above regularly scheduled training sessions of NFA and EMI. The policy of NETC is to accommodate other training activities on a space-available basis at the Emmitsburg campus. In order for NETC to approve and schedule the use of its facilities, information must be provided by special group organizations. A written, email or telephone request for use of NETC facilities is initially made to determine availability of the facilities. If space is available, the contact person for the special group must follow up by completing FEMA Form 75–11 to provide information on the number of participants, meals, and special requirements. The information is used to assign classrooms, schedule equipment, and arrange for food service. FEMA Form 75–10 is used to collect names and purchase order numbers of those who will require lodging at NETC.

Affected Public: Not-for-profit institutions; Federal Government; State, Local or Tribal Government; individuals or households; and business or other for-profit.

Estimated Total Annual Burden Hours: Ten.

Project/activity (survey, form(s), focus group, worksheet, etc.)	No. of respondents (A)	Frequency of responses (B)	Burden hours per respondent (C)	Annual responses (D) = (A×B)	Total annual burden hours (E) = (C×D)
75–10	60	1	5 min. or 0.08	60	5
75–11	60	1	5 min. or 0.08	60	5
Total	120		10 minutes	120	10

Estimated Cost: $15.80.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments must be submitted on or before August 17, 2007.

ADDRESSES: Interested persons should submit written comments to Chief, Records Management and Privacy, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, 500 C Street, SW., Room 609, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Merril Sollenberger, Special Groups and Visitors Coordinator, U.S. Fire Administration, telephone (301) 447–1179, facsimile number (301) 447–1052, or at e-mail address, *merril.sollenberger@dhs.gov* for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: June 11, 2007.

John A. Sharetts-Sullivan,

Chief, Records Management and Privacy, Office of Management Directorate, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–11658 Filed 6–15–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1706–DR]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–1706–DR), dated June 6, 2007, and related determinations.

EFFECTIVE DATE: June 6, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 6, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Nebraska resulting from severe storms, flooding, and tornadoes during the period of May 4–19, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Lee H. Rosenberg, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Nebraska to have been affected adversely by this declared major disaster:

Blaine, Brown, Cass, Custer, Gage, Garfield, Jefferson, Johnson, Keya Paha, Knox, Loup, Nemaha, Otoe, Pawnee, Richardson, Saline, Saunders, and Wheeler Counties for Public Assistance.

All counties within the State of Nebraska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–11629 Filed 6–15–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1707–DR]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1707–DR), dated June 7, 2007, and related determinations.

EFFECTIVE DATE: June 7, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 7, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oklahoma resulting from severe storms, tornadoes, and flooding during the period of May 4–11, 2007 is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Philip E. Parr, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster:

Atoka, Beckham, Blaine, Caddo, Comanche, Dewey, Ellis, Greer, Kay, Kiowa, Lincoln, Noble, Nowata, Okfuskee, Pottawatomie, Roger Mills, and Seminole Counties for Public Assistance.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–11662 Filed 6–15–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1702–DR]

South Dakota; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota (FEMA–1702–DR), dated May 22, 2007, and related determinations.

EFFECTIVE DATE: June 8, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 8, 2007.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–11632 Filed 6–15–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Sensitive Security Information Threat Assessments

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for

review and approval of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on February 14, 2007 (72 FR 7059). The collection involves the submission of information by individuals seeking access to Sensitive Security Information (SSI) for use in civil proceedings in Federal court.

DATES: Send your comments by July 18, 2007. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson, Communications Branch, Business Management Office, Operational Process and Technology, TSA–32, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–3651; facsimile (571) 227–3588.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Sensitive Security Information Threat Assessments.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0042.

Forms(s): Security Threat Assessment Application.

Affected Public: Individuals seeking access to Sensitive Security Information (SSI) for use in civil proceedings in Federal court.

Abstract: TSA is seeking to renew this control number for the maximum three-year period in order to continue compliance with sec. 525 of the Department of Homeland Security Appropriations Act of 2007 (DHS Appropriations Act), and to continue the process TSA developed whereby a party seeking access to SSI in a civil proceeding in federal court that demonstrates a substantial need of relevant SSI in the preparation of the party's case, and that the party is unable without undue hardship to obtain the substantial equivalent of the information by other means, may request that the party or party's representative be granted conditional access to the SSI at issue in the case. Additionally, court reporters that are required to record or transcribe testimony containing specific SSI and do not have a current clearance required for access to classified national security information as defined by E.O. 12958 will need to request to be granted access to SSI. TSA will use the information collected to conduct the threat assessment for the purpose of determining whether the provision of such access to the information for the proceeding presents a risk of harm to the nation. The results of the threat assessment will be used to make a final determination on whether the individual may be granted access to the SSI at issue in the case.

Number of Respondents: 180.

Estimated Annual Burden Hours: An estimated 180 hours annually.

Issued in Arlington, Virginia, on June 11, 2007.

Fran Lozito,

Director, Business Management Office, Operational Process and Technology.

[FR Doc. E7–11618 Filed 6–15–07; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Notice of Meeting

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Committee.

DATES: July 24, 2007, at 9 a.m.

ADDRESSES: Exxon Valdez Oil Spill Trustee Council Office, 441 West 5th Avenue, Suite 500, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska, 99501, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The meeting agenda will include a discussion of the future direction for the restoration program and plans for the herring restoration effort.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. E7–11667 Filed 6–15–07; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–921–03–1320–EL; COC–070996]

Notice of Invitation for Coal Exploration License Application, Bowie Resources, LLC. COC–070996; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation for Coal Exploration License.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended, by section 4 of the Federal Coal Leasing Amendments Act of 1976, Stat. 1083, 30 U.S.C. 201(b), and to the

regulations adopted as 43 Code of Federal Regulations (CFR), part 3410, all interested parties are hereby invited to participate with Bowie Resources, LLC, on a pro rata cost sharing basis in a program for the exploration of unleased coal deposits owned by the United States of America in Delta County, Colorado:

T. 12 S., R. 91 W., 6th P.M.
Sec. 23; N½SW¼, S½NW¼, NW¼SE¼, Lots 4 and 5, inclusive.
Containing 244.12 acres.

DATES: Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management (BLM) and Bowie Resources, LLC, as provided in the **ADDRESSES** section below, no later than 30 days after publication of this invitation in the **Federal Register**.

ADDRESSES: Copies of the exploration plan and license application (serialized under the number of COC–070996) are available for review during normal business hours in the public room of the BLM State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the Uncompahgre Field Office, 2505 South Townsend Avenue, Montrose, Colorado 81401. The written notice to participate in the exploration plan should be sent to both, Kurt M. Barton, CO–921, Solid Minerals Staff, Division of Energy, Lands and Minerals, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215; and, William A. Bear, Jr., Bowie Resources, LLC, P.O. Box 483, Paonia, Colorado 81428.

SUPPLEMENTARY INFORMATION: This coal exploration license will be issued by the BLM. The exploration program is fully described and is being conducted pursuant to an exploration plan approved by the BLM. The plan may be modified to accommodate the legitimate exploration needs of persons seeking to participate. This notice of invitation to participate was published in The Delta County Independent, once a week for two consecutive weeks beginning the first week of April 2007 and in the **Federal Register**. The forgoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Kurt M. Barton,

Solid Minerals Staff, Division of Energy, Lands and Minerals.

[FR Doc. E7–11614 Filed 6–15–07; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–921–03–1320–EL; COC–071108]

Notice of Invitation for Coal Exploration License Application, Oxbow Mining, LLC. COC–071108; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation for Coal Exploration License.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended, by section 4 of the Federal Coal Leasing Amendments Act of 1976, Stat. 1083, 30 U.S.C. 201(b), and to the regulations adopted as 43 Code of Federal Regulations (CFR), part 3410, all interested parties are hereby invited to participate with Oxbow Mining, LLC, on a pro rata cost sharing basis in a program for the exploration of unleased coal deposits owned by the United States of America in Gunnison County, Colorado:

T. 13 S., R. 90 W., 6th P.M.
Sec. 3, lots 5–12, 15, 16, inclusive;
Sec. 4, lots 5–16, inclusive;
Sec. 5, lots 5, 12, 13, 16, 19, inclusive.
Containing 1,039.52 acres.

DATES: Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management (BLM) and Oxbow Mining, LLC, as provided in the **ADDRESSES** section below, no later than 30 days after publication of this invitation in the **Federal Register**.

ADDRESSES: Copies of the exploration plan and license application (serialized under the number of COC–071108) are available for review during normal business hours in the public room of the BLM State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the Uncompahgre Field Office, 2505 South Townsend Avenue, Montrose, Colorado 81401. The written notice to participate in the exploration plan should be sent to both, Kurt M. Barton, CO–921, Solid Minerals Staff, Division of Energy, Lands and Minerals, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215; and, Jim Kiger, Oxbow Mining, LLC, PO Box 535, Somerset, CO 81434.

SUPPLEMENTARY INFORMATION: This coal exploration license will be issued by the BLM. The exploration program is fully described and is being conducted pursuant to an exploration plan approved by the BLM. The plan may be modified to accommodate the legitimate exploration needs of persons seeking to participate. This notice of invitation to participate was published in *The Delta County Independent,* once a week for two consecutive weeks beginning the second week of May 2007. The forgoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Kurt M. Barton,

Solid Minerals Staff, Division of Energy, Lands and Minerals.

[FR Doc. E7–11617 Filed 6–15–07; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW137447]

Wyoming: Proposed Conversion of Unpatented Oil Placer Mining Claim Buffalo 19 WMC–71464 to Noncompetitive Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Conversion of Unpatented Oil Placer Mining Claim to Noncompetitive Oil and Gas Lease.

SUMMARY: The Mineral Leasing Act provides a means by which a mining claimant may seek to convert an oil placer mining claim to a noncompetitive oil and gas lease if the claim was deemed conclusively abandoned because of the claimant's failure to timely file certain assessment work filings required by the Federal Land Policy and Management Act (FLPMA). 30 U.S.C. 188(f). Since 1993, Congress has required annual maintenance fees in lieu of the assessment work filings required by FLPMA. On August 31, 1994, MW Petroleum Corporation and its co-claimants failed to pay the annual maintenance fee for oil placer mining claim, WMC–71464. On May 31, 1995, the Bureau of Land Management (BLM) notified MW Petroleum and its co-claimants that the oil placer mining claim was null and void by operation of law. On August 24, 1995, in accordance with the requirements outlined in 30 U.S.C. 188(f), MW Petroleum Corporation filed a petition for conversion of the abandoned unpatented oil placer mining claim to a noncompetitive oil and gas lease. The claim to be converted is the Buffalo 19 unpatented oil placer mining claim, which is located in Park County, Wyoming. The description of the land is as follows:

T. 48 N., R. 100 W., 6th PM, WY
Sec. 35: SW
Containing 160.00 acres.

The unpatented oil placer mining claim was validly located before February 24, 1920, and is currently producing gas. The mining claim was deemed null and void by operation of law because of the claimant's failure to timely pay the maintenance fee required by the Omnibus Budget Reconciliation Act of August 10, 1993, Pub. L. No. 105–240, § 116. The statutory forfeiture date was August 31, 1994. MW Petroleum has shown to the BLM's satisfaction that its failure to pay the maintenance fee was inadvertent. In 1998, MW Petroleum Corporation and Apache Corporation merged into one company, known by the name Apache Corporation. Consequently, when issued, the lease will be issued to Apache Corporation. The lease will be effective August 31, 1994, the statutory date of abandonment of the mining claim. The BLM has not issued any other oil and gas lease affecting any of the lands covered by the abandoned oil placer mining claim. The prospective lessee has agreed to the noncompetitive oil and gas lease terms. The BLM has assigned serial number WYW 137447 to the proposed noncompetitive lease and will issue the lease thirty days after the publication date of this **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The prospective lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. In addition, the prospective lessee has paid all back rental and royalties from September 1994, to the present. MW Petroleum Corporation has submitted production reports for the period from September 1994, to present. The production during this period was approximately 5,242 MCF of gas. The noncompetitive oil and gas lease will require rental at $5 per acre or fraction thereof per year and royalty at the rate of 12½ percent.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E7–11619 Filed 6–15–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Regional Water Management Plan for the Sacramento River Contractors

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The Regional Water Management Plan for the Sacramento River Contractors (Regional Plan) is available for review. Participating Contractors include:

- Anderson-Cottonwood Irrigation District
- Meridian Farms Water Company
- Glenn-Colusa Irrigation District
- Sutter Mutual Water Company
- Provident Irrigation District
- Pelger Mutual Water Company
- Princeton-Codora-Glenn Irrigation District
- Natomas Central Mutual Water Company
- Reclamation District No. 108
- Reclamation District No. 1004

Under the authority of the Central Valley Project Improvement Act of 1992 (CVPIA) and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Regional Criteria for Evaluating Water Management Plans for the Sacramento River Contractors (Regional Criteria) in 2004. The development and implementation of the Regional Criteria for the Sacramento Valley was an alternative pilot program to the current Standard Criteria for Evaluating Water Management Plans (Standard Criteria), as stated in the Water Conservation Administrative Proposal dated March 20, 1997. If the Contracting Officer deems this pilot program to be unsuccessful, the Regional Criteria will be discontinued. All subsequent Plans would then be evaluated under the current Standard Criteria. The above entities have developed the Regional Plan, which Reclamation has evaluated and preliminarily determined to meet the requirements of the Regional Criteria.

DATES: All public comments must be received by August 2, 2007.

ADDRESSES: Please mail comments to Ms. Laurie Sharp, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California, 95825, or contact Ms. Sharp at 916–978–5232 (TDD 978–5608), or e-mail at *lsharp@mp.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Ms. Laurie Sharp at the telephone number or e-mail address above.

SUPPLEMENTARY INFORMATION: We are inviting the public to comment on the preliminary (*i.e.*, draft) determination of Regional Plan adequacy. In September 1995, the Department of the Interior (Interior) invited the public to identify any concerns they had regarding implementation of the CVPIA (Title XXXIV of Public Law 102–575). To that end, Interior circulated a draft Administrative Proposal on Water Conservation Criteria on May 13, 1996. One concern that came to light was the applicability of Best Management Practices (BMPs) in different regions. Some water users had argued that it is inappropriate to establish a single set of criteria for water conservation plans in the CVP service area due to regional variations. In response to this comment, Interior developed Regional Criteria. The Regional Criteria state that the following are excepted from the requirement to prepare a Plan using these Regional Criteria:

- All contractors that receive only irrigation water from any Federal Reclamation project and deliver said water to less than 2,000 acres of land.
- All contractors that receive less than an annual average of 2,000 acre-feet from any Federal Reclamation project.

The Regional Plan contains the following information:

1. Description of the Region Covered by the Plan
2. Inventory of Water Resources
3. Identify Regional Water Measurement Program
4. Analyze Water Management Quantifiable Objectives (QOs)
5. Identify Actions to Implement and Achieve Proposed QOs
6. Establish Monitoring Program
7. Budget and Allocation of Regional Cost
8. Regional Plan Coordination
9. Five-Year Plan Revision Procedure

Reclamation evaluated the Regional Plan based on the Regional Criteria. A copy of the Regional Plan will be available for review at Reclamation's Mid-Pacific Regional Office located in Sacramento, California, and the Northern California Area Office located in Willows, California. Comments received in response to this notice will become part of the administrative record and are subject to public inspection. Our practice is to make comments, including names, home addresses, home phone numbers, and email addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you would like us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted

invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, or from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. If you wish to review a copy of the Regional Plans, please contact Ms. Laurie Sharp to find the office nearest you.

Dated: May 9, 2007.

Richard J. Woodley,

Regional Resources Manager, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. E7–11689 Filed 6–15–07; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 019–2007]

Privacy Act of 1974; Systems of Records

AGENCY: United States Marshals Service, Department of Justice.

ACTION: Notice of modified systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the United States Marshals Service (USMS), Department of Justice, is issuing public notice of its proposal to modify its systems of records. This notice publishes updates to those systems of records, last published in the **Federal Register** on November 8, 1999 (64 FR 60832–52), except as otherwise set forth below under the caption **SUPPLEMENTARY INFORMATION**.

DATES: Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on routine uses. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to review the systems modifications. The public, OMB and Congress are invited to comment on the modifications to these systems. Please submit any comments by July 30, 2007. The proposed changes will be effective on that date, unless comments are received that result in a contrary determination.

ADDRESSES: Submit written comments to the Department of Justice (DOJ), ATTN: Mary E. Cahill, Management and Planning Staff, Justice Management Division, Washington, DC 20530 (Room 1400, NPB), facsimile number 202–307–1853.

FOR FURTHER INFORMATION CONTACT: Ed Bordley, Attorney-Advisor, USMS, at 202–307–8571.

SUPPLEMENTARY INFORMATION: Modifications to the USMS systems of records include: Updates to addresses for the systems locations and systems managers' locations; corrections to office designations for systems locations and titles of systems managers; revisions to reduce redundancy and increase clarity; additions or changes to more accurately describe the systems' categories of individuals, purposes, categories of records and record source categories; clarifications to existing routine uses; additions to the routine uses; updates to the retention and disposal sections; and additions to data elements omitted from previous notices. Specific changes for each USMS system of records notice are set forth below:

USMS Badge & Credentials File, Justice/USM–001: The system location and system manager location address have been updated. The section on categories of individuals covered by the system has been changed. Routine uses have been added and the others revised. An element has been added under storage. Under record source categories, the category ''individuals for whom the badges/credentials were made'' was added.

USMS Internal Affairs System, Justice/USM–002: The system location and system manager location address have been updated; the system manager's designation has also been changed. The record categories designation was modified to reflect the change in the system manager's designation. The categories of individuals and record source categories were expanded to be more specific. Routine uses have been added and the others revised.

Special Deputation Files, Justice/USM–004: The system location and system manager location address has been updated; the system manager's designation has also been changed. The categories of individuals covered designation has been expanded to be more specific. Minor revisions were made to the categories of records. Routine uses have been added and the others revised. The record source categories subdivision has been revised to include individual applicants.

*USMS Prisoner Processing and Population Management/Prisoner Tracking System (PPM/PTS), Justice/USM–005, last published in the **Federal Register** on April 28, 2004 (69 FR 23213):* The system manager designation has been changed. New categories have been added to the categories of individuals covered. Under routine uses, the markers have been changed from numeric to alpha characters to match the other system notices. Three routine uses were removed to eliminate redundancy; and one was added. The record source categories designation was revised to reflect the changes in the individual categories.

USMS Training Files, Justice/USM–006: The primary system location and system manager location address have been updated. The wording has been changed for the categories of individuals covered. Routine uses have been added and minor revisions made to others. The retention and disposal period has been corrected.

Witness Security Files Information System, Justice/USM–008: The system location and system manager location address have been updated. The section on categories of individuals covered has been expanded to include potential witnesses and witnesses' or potential witnesses' families; the wording has also been changed. The categories of records has been revised to reflect the changes made in the categories of individuals. Routine uses have been added and one routine use has been removed. The retention and disposal category has been corrected; the record source categories have also been modified.

Inappropriate Communications/Threat Information System (IC/TIS), Justice/USM–009: The primary system location and system manager location address have been updated. Routine uses were added and minor revisions made to the others. The retention and disposal category has been corrected. The record source categories have been revised to include the threat or inappropriate communication initiator.

Judicial Facility Security Index System, Justice/USM–010: The system location and system manager location address have been updated. ''USMS facilities'' has been added to the categories of individuals covered. Routine uses were added and minor revisions made to the others. ''Contractor'' has been added to the retrievability category.

Judicial Protection Information System, Justice/USM–011: The system location and system manager location address have been updated. A ''Decentralized Segment'' has also been added under system location. Routine uses have been added and minor revisions made to the others. The record source category has been reworded.

U. S. Marshals Service Administrative Proceedings, Claims, and Civil Litigation Files, Justice/USM–013: The system location and system manager location

address have been updated. Routine use (f) was reworded. Routine uses were added and minor revisions made to the others.

USMS Key Control Record System, Justice/USM–016: The system location address has been updated and a decentralized location added. The system manager has also been changed. The categories of individuals covered was modified to reflect the decentralized location change. The record categories designation was changed to eliminate redundancy. Routine uses were added and minor revisions made to others.

Judicial Security Staff Inventory System, USMS–017: The system location and system manager location address have been updated. The categories of individuals covered has been expanded to include contract employees and other individuals. Routine uses have been added and minor revisions made to the others.

USMS Alternative Dispute Resolution (ADR) Files and Database Tracking System, USM–018: The system location and system manager location address have been updated. Routine uses have been added and minor revisions made to the others.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report on the modified systems to OMB and the Congress. Descriptions of these systems are found below.

Dated: June 5, 2007.

Lee J. Lofthus,

Assistant Attorney General for Administration.

JUSTICE/USM–001

SYSTEM NAME:

U.S. Marshals Service Badge & Credentials File.

SECURITY CLASSIFICATION:

Limited official use.

SYSTEM LOCATION:

Human Resources Division, United States Marshals Service, CS–3, Washington, DC 20530–1000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former U.S. Marshals Service (USMS) personnel, other federal employees, and student volunteers or other workers when they are performing work for the USMS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel data system established to control issuance of badges and credentials to USMS personnel which contains photographs of all employees and hand receipts showing the employee's name, title, duty location, badge and credential numbers, and date of issuance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

PURPOSE(S):

The Badge & Credentials File system assists in controlling the issuance of badges and credentials to USMS personnel which are used for identification purposes in the performance of official duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This file serves as a record of issuance of credentials. Information from this file may be disclosed:

(a) To any criminal, civil, or regulatory law enforcement authority (whether federal, state, territorial, local, tribal, or foreign) where the information is relevant to the recipient entity's law enforcement responsibilities;

(b) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding;

(c) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government when necessary to accomplish an agency function related to this system of records;

(d) To the news media and the public, including disclosures pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(e) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record;

(f) To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(g) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings;

(h) Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, territorial, local, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law;

(i) To appropriate officials and employees of a federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

(j) To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, territorial, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility;

(k) To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in standard folders and kept electronically.

RETRIEVABILITY:

Records are indexed and retrieved by the individual's name and numerical order of badges and credentials.

SAFEGUARDS:

Access is restricted to personnel of the Background and Suitability Team, Human Resources Division. Records are maintained in metal filing cabinets which are locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are kept for duration of employee's tenure in the service. Records are destroyed when superseded or obsolete.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Human Resources Division, United States Marshals Service, CS–3, Washington, DC 20530–1000.

NOTIFICATION PROCEDURE:

Same as ''Record access procedures.''

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing with the envelope and the letter clearly marked ''Privacy Act Request.'' It should clearly indicate the name of requester, the nature of the record sought and the approximate dates covered by the record. The requester shall also provide the required verification of identity (28 CFR 16.41(d)) and provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above, Attention: FOI/PA Officer.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the address of the System Manager listed above, Attention: FOI/PA Officer, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Record of Notification of Employment by U.S. Marshals Service, Human Resources Division and the individuals for whom the badges/credentials are made.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

JUSTICE/USM–002

SYSTEM NAME:

Internal Affairs System.

SECURITY CLASSIFICATION:

Limited Official Use.

SYSTEM LOCATION:

United States Marshals Service (USMS), Operations Support Division, CS–3, Washington, DC 20530–1000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USMS employees reported for or investigated for alleged misconduct.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Internal Affairs System contains statements of the investigator and witnesses, exhibits and reports of investigations prepared by the Office of Inspection, USMS, on findings of alleged misconduct of USMS employees, and records on the disposition of the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509 and 510; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(n).

PURPOSE(S):

The Internal Affairs system is maintained in order to carry out the responsibility of investigating allegations of improper conduct on the part of USMS employees, and to support adverse personnel actions and proceedings which may result based on the findings of the investigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

RECORDS OR INFORMATION MAY BE DISCLOSED:

(a) To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim;

(b) Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law;

(c) To any person or entity that the USMS Office of Internal Investigations has reason to believe possesses information regarding a matter within the jurisdiction of the USMS Office of Internal Investigations, to the extent deemed to be necessary by the Office in order to elicit such information or cooperation from the recipient for use in the performance of an authorized activity;

(d) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(e) To appropriate officials and employees of a federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit;

(f) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding;

(g) To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(h) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record;

(i) To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(j) To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, territorial or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires

information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility;

(k) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings.

(l) To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Originals stored in standard file folders. Duplicate copies are maintained on compact discs.

RETRIEVABILITY:

Information is retrieved by the employee's name and case file number.

SAFEGUARDS:

Records are stored in locked safe. Access to automated records is protected by user identification and passwords.

RETENTION AND DISPOSAL:

Records are transferred to the Washington National Records Center three years after the case or investigation is closed, and destroyed 10 years after the close of the case or investigation.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Inspection, Operations Support Division, U.S. Marshals Service, CS–3, Washington DC 20530–1000.

NOTIFICATION PROCEDURE:

Same as the ''Records access procedures.''

RECORD ACCESS PROCEDURES:

To the extent that this system is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked ''Privacy Act Request.'' It should clearly indicate name of the requester, the nature of the record sought and approximate dates covered by the record. The requester shall also provide the required verification of identity (28 CFR 16.41(d)) and provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above, Attention: FOI/PA Officer.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager identified above, stating clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are the individuals covered by the system, individuals and entities contacted by investigators, and government records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4)(d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(5), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2) and (k)(5). To the extent that investigations reveal actual or potential criminal or civil violations, this system is additionally exempt from subsection (e)(8) of the Privacy Act pursuant to 5 U.S.C. 552(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e) and have been published in the **Federal Register**. See 28 CFR 16.101.

JUSTICE/USM–004

SYSTEM NAME:

Special Deputation Files.

SECURITY CLASSIFICATION:

Limited Official Use.

SYSTEM LOCATION:

United States Marshals Service (USMS), Investigative Services Division, CS–4, Washington, DC 20530–1000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal, state and local law enforcement employees; physical security and personal protection employees; USMS employees; and USMS contract personnel appointed to perform the functions of Deputy U.S. Marshals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Special Deputation files contain agency request letters, individual applications for special deputation, notifications to local U.S. Marshal to swear in special deputies, copies of oath of office and credentials of persons utilized as deputy marshals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 CFR subpart T, 0.112, 28 U.S.C. 562.

PURPOSE(S):

The USMS is authorized to deputize selected persons to perform the functions of a Deputy U.S. Marshal whenever the law enforcement needs of the USMS so require, to provide courtroom security for the Federal judiciary, and as designated by the Associate Attorney General pursuant to 28 CFR 0.19(a)(3). USMS Special Deputation files serve as a centralized record of the special deputations granted by the USMS to assist in tracking, controlling and monitoring the Special Deputation Program. Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Records or information may be disclosed:

(a) To a federal, state or local law enforcement agency regarding that agency's USMS deputized employees;

(b) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding;

(c) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(d) To the news media and the public, including disclosures pursuant to 28

CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(e) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record;

(f) To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(g) Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law;

(h) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings;

(i) To appropriate officials and employees of a federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit;

(j) A record may be disclosed to designated officers and employees of state, territorial, local (including the District of Columbia), or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision;

(k) To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel—related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility;

(l) To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are filed in standard file cabinets. Duplicate copies of paper records are stored on magnetic discs.

RETRIEVABILITY:

Files are indexed by name and by government department.

SAFEGUARDS:

Records are kept in a locked file. Computerized records are password protected.

RETENTION AND DISPOSAL:

Records are cut off annually upon expiration and destroyed when they are five years old.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Special Deputation Unit, Investigative Services Division, U.S. Marshals Service, CS–4, Washington, DC 20530–1000.

NOTIFICATION PROCEDURES:

Same as the ''Records access procedures.''

RECORDS ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly, marked ''Privacy Act Request.'' It should clearly indicate name of the requester, the nature of the record sought and approximate dates covered by the record. The requester shall also provide the required verification of identity (28 CFR 16.41(d)) and provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above, Attention: FOI/PA Officer.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager identified above, stating clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information is derived from individual applicants and agencies requesting special deputations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

JUSTICE/USM–005

SYSTEM NAME:

U.S. Marshals Service Prisoner Processing and Population Management/Prisoner Tracking System (PPM/PTS).

SECURITY CLASSIFICATION:

Limited Official Use.

SYSTEM LOCATION:

Primary System: Witness Security and Prisoner Operations, U.S. Marshals Service, 11th Floor, CS–4, Washington, DC 20530–1000.

Decentralized Segments: Each district office of the U.S. Marshals Service (USMS) maintains only files on prisoners taken into custody of the U.S. Marshal for the respective district. The addresses of USMS district offices are on the Internet at (*http://www.usmarshals.gov*).

Centralized Segment: The Contractor with whom the USMS has contracted to establish and manage a nationwide integrated health care delivery system and to process and pay medical claims will maintain a single site for appropriate paper documents (e.g., invoices) and automated files online related to these activities (e.g., names and addresses of hospitals, physicians and other health care providers and support service systems).

Medical Records: Records generated by community physicians, hospitals, and ancillary support service systems developed by the Contractor as participants in the Preferred Provider Network (PPN) to deliver health care services for USMS prisoners are maintained by the respective offices of these licensed providers. Addresses of these licensed providers may be obtained by contacting the USMS Office of Interagency Medical Services (OIMS), Prisoner Services Division at the address above.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Arrestees, fugitives, prisoners, and other individuals under custody of the USMS and prisoner health care services providers under the USMS Managed Health Care Contract.

CATEGORIES OF RECORDS IN THE SYSTEM:

Any and all information necessary to complete administrative processes, safekeeping, health care, and disposition of individual Federal prisoners who are in custody pending criminal proceedings, together with any law enforcement related records generated during such custody. Records include a compilation of basic information on each individual taken into the U.S. Marshals Service's custody including identifying data, reason for U.S. Marshal custody (e.g., Federal indictment, complaint, or writ), the court disposition of charges, custody dates, and institutions to which individuals are committed or housed. The records also encompass Form USM–129, Prisoner Custody, Detention and Disposition Record (formerly DJ–100); prisoner photograph; personal history statement; fingerprint card; identification record; detainer notice; speedy trial notice; prisoner remand or order to deliver prisoner, and receipt for U.S. prisoner; property receipt; court records including writs, bail/bond release information, judgment and commitment and other court orders; prisoner alert notice; prisoner complaints or serious incident reports (and related investigatory information) filed by either the prisoner or by officials or by other individuals at the institution where the prisoner is housed and covering a wide range of potentially serious issues, e.g., medical treatment of prisoners, and attempted escapes or alleged prisoner misconduct or criminal activity; designation requests to Bureau of Prisons (BOP) and BOP responses; information identifiable to informants, protected witnesses, and confidential sources; access codes and data entry codes and message routing symbols used to communicate with law enforcement officials regarding the custody and safekeeping of prisoners; and prisoner transportation requests to the Prisoner Transportation Division (and any related records) which may include sensitive security data. Medical records included in this system consist of nurses' notes of medical problems, diagnosis, treatment recommended; names of health care providers at the housing unit, social workers, attorneys, family members and USMS contact personnel; special issue or treatment notices; names and addresses of community treatment facilities, physicians and other community health care providers and support service systems, dates of service, provider tax identification numbers; medical care given, cost of care, and billing records. Medical records generated by health care providers may be included in this system of records, as necessary for continuity of care/appropriate care or infectious disease control.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 3149, 3193, 3604, 3621, 4002, 4006, 4086, 4285; 28 U.S.C. 509, 510, 568, 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111.

PURPOSE(S):

The Prisoner Processing and Population Management/Prisoner Tracking System (PPM/PTS) is maintained to cover law enforcement and security related records which are generated in the local USMS district offices in connection with the processing, safekeeping, and disposition of individuals in USMS's custody. Medical records included in this system assist consultation and coordination between the USMS district office, the housing unit, treatment facility, health care provider, transportation facility, and other Federal agencies, e.g., BOP, to ensure that prisoners in custody of the U.S. Marshals are given proper treatment. Through USMS nursing staff, districts are assisted in determining medical treatment necessary while the prisoner is in custody of the U.S. Marshal and in ensuring the prisoner's medical clearance for travel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Records or information may be disclosed:

(a) To other federal, state, local or foreign law enforcement agencies; contractors and/or subcontractors; contract detention or medical facilities; and health care providers to protect and ensure the safety and/or health of prisoners, the public, and law enforcement officials; to ensure fair and proper treatment of prisoners during custody and transfer of custody; to assist the USMS in pursuing any necessary inquiry/investigation of complaints, alleged misconduct or criminal activity; to process and pay medical claims; and to perform evaluation duties. For example, relevant records or information may be disclosed to secure the safe and efficient transfer of prisoners to other jurisdictions, to court appearances, or to the designated institution for service of sentence; to ensure that appropriate credit for time in custody is given; that appropriate medical treatment is provided; that all rights of the prisoner, whether statutory, humanitarian, or otherwise, are provided and protected; and to elicit information from which to initiate an inquiry/investigation and/or respond to prisoner complaints and reports of alleged misconduct or criminal activity; or, conversely, to enable those entities to respond to, or provide information relating to, such prisoner complaints or reports of misconduct or criminal activity;

(b) To any criminal, civil, or regulatory law enforcement authority (whether federal, state, territorial, local, tribal, or foreign) where the information is relevant to the recipient entity's law enforcement responsibilities.

(c) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding;

(d) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings;

(e) To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(f) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record;

(g) To the National Archives and Records Administration for purposes of records management inspections

conducted under the authority of 44 U.S.C. 2904 and 2906;

(h) To federal, state, territorial, local, tribal, foreign or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit;

(i) A record may be disclosed to designated officers and employees of state, territorial, local (including the District of Columbia), or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision;

(j) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(k) To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, territorial, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility;

(l) To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in standard file cabinets. Duplicate copies of certain paper and electronic records are stored on magnetic discs.

RETRIEVABILITY:

Information is retrieved by name and/or number of individual in custody, and/or health care provider. Records retrieved by name or number of health care provider will consist of the provider's address, name and number of prisoners treated, claim number, dates of service, nature of service, amount billed, USMS amount allowed, amount saved, and percentage saved.

SAFEGUARDS:

Paper records are stored in locked files. Access to computerized data is restricted through user identification and discrete password functions. In addition, USMS district and headquarters offices are secured behind locked doors around the clock and access is restricted to USMS personnel with official identification.

All USMS contractors must have personnel security clearances commensurate with the highest level of information processed by the system, in this case Limited Official Use. Encryption technology shall be applied to passwords and symmetric or private asymmetric keys, activities of a system administrator or for system maintenance, and information stored on laptop computers. All information technology systems within a component are subject to the certification and accreditation process.

RETENTION AND DISPOSAL:

General prisoner records are kept in active files until a prisoner has been transferred from the custody of USMS. After a prisoner leaves USMS custody, the file is closed, and at the end of the year, closed files are separated from active files. Closed files are maintained for one year after separation, then are transferred to a Federal Records Center, and are destroyed after 10 years, or sooner, if ordered by the Court. This does not apply to records maintained by the Contractor, which are discussed below.

The Contractor will maintain all appropriate paper documents (i.e., invoices, etc.) and automated online files for the duration of the contract performance. Computer storage media containing Limited Official Use information will be overwritten or degaussed prior to release of the storage media outside the USMS. At the end of the contract, the contractor shall turn over all paper documents and automated files of the database offline to the USMS within two weeks of contract expiration. All paper documents and automated files of the database will be maintained in accordance with the General Records Schedule 6, Item 1a (Accountable Officers' Files), as published by NARA, unless a longer retention period is necessary because of pending administrative or judicial proceedings.

The retention and disposal procedures for this system of records are in accordance with the NARA disposition authority for the USMS which is NI 527–99–1, or the General Records Schedule as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Witness Security and Prisoner Operations, United States Marshals Service, 11th Floor, CS–4, Washington, DC 20530–1000.

NOTIFICATION PROCEDURE:

Same as ''Record access procedures.''

RECORD ACCESS PROCEDURES:

Requests for access must be in writing and should be addressed to the System Manager named above, Attention: FOI/PA Officer. The envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed, dated, and either notarized or submitted under penalty of perjury. Some information may be exempt from access provisions as described in the section entitled ''Exemptions Claimed for the System.'' An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager listed above, Attention: FOI/PA Officer, stating clearly and concisely the identifying information required above in ''Record access procedures'', what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information may be exempt from contesting record procedures as described in the section entitled ''Exemptions Claimed for the

System.'' An individual who is the subject of a record in this system may amend those records that are not exempt. A determination whether a record may be amended will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

Information is received from the individual in custody; the courts, federal, state, territorial, local, tribal and foreign law enforcement agencies and personnel; witnesses; and medical care professionals and/or facilities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2), (3), (e)(5) and (e)(8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**. The rules are codified at 28 CFR 16.101(q) and (r).

JUSTICE/USM–006

SYSTEM NAME:

United States Marshals Service Training Files.

SECURITY CLASSIFICATION:

Limited official use.

SYSTEM LOCATION:

a. Primary system: Human Resources Division, United States Marshals Service, CS–3, Washington, DC 20530–1000.

b. Decentralized segments: Individual training files and the Fitness in Total (FIT) Program training assessment files, identified as items (1) and (3) under ''Categories of Records in the System,'' are located also at the USMS Training Academy, Department of Justice, Building 70, Glynco, Georgia 31524. Each district office of the USMS maintains FIT files only on their respective participants in the FIT Program. The addresses of USMS district offices are on the Internet (*http://www.usdoj.gov/marshals/usmsofc.html*).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Trainees hired as Deputy U.S. Marshals and Deputy U.S. Marshals.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Individual training files contain information on the individual's educational background and employee training history, and an individual career development plan; (2) skills files identify languages and other special skills possessed by the individual USMS employee; and (3) individual FIT Program training assessment files contain records on physical and medical examinations, blood tests, health histories, physical assessments, and administrative records on participation, goal setting and progress while in the program. The Certificate of Medical Examination (SF–78) is maintained in the primary system at USMS headquarters only unless obtained and placed in the district file by the individual FIT participant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510, and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(h).

PURPOSE(S):

Individual training files are used to make employment, promotion, or retention determinations for all Deputy U.S. Marshals; to develop training histories; and to determine training and/or promotion eligibility. In addition, FIT Program training assessment files are used to make hiring/retention determinations for Deputy U.S. Marshal personnel entering on duty as of July 1, 1984 and later; to determine employees' eligibility to participate in the program; to tailor an individual fitness program for each employee; to chart employee progress in the program; to determine the need for and to chart progress toward weight reduction; to develop physical fitness standards for performance appraisal purposes; and to examine statistically the physical fitness level of the USMS workforce against law enforcement populations and the general population of the United States. Skills files are used to identify special skills and language abilities possessed by personnel to aid in staffing special assignments which require such skills.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

RECORDS OR INFORMATION MAY BE DISCLOSED AS A ROUTINE USE:

(a) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding;

(b) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(c) To appropriate officials and employees of a federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit;

(d) To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(e) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record;

(f) To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(g) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings;

(h) A record may be disclosed to designated officers and employees of state, territorial, local (including the District of Columbia), or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision;

(i) To any criminal, civil, or regulatory law enforcement authority (whether federal, state, local, territorial, tribal, or foreign) where the information is relevant to the recipient entity's law enforcement responsibilities;

(j) To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, territorial, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel—related or other official

purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility;

(k) To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Originals of paper records contained in this system are kept in standard file cabinets. Skills files, summaries of FIT Program training assessment records, and duplicates of paper records are stored on magnetic discs.

RETRIEVABILITY:

Records are retrieved by the employee's name.

SAFEGUARDS:

Records are maintained in metal filing cabinets which are locked during non-duty hours. Entry to headquarters is restricted by 24-hour guard service to employees with official and electronic identification. Entry to the Training Academy and district offices is restricted generally to trainees/employees with official identification. Access to computerized records in this system is restricted to the responsible headquarters employees by assigned code.

RETENTION AND DISPOSAL:

Files are maintained for five (5) years then the magnetic disks are erased and paper records are archived in the Federal Records Center and destroyed when 20 years old, unless the employee leaves the USMS at which time paper records are transferred to another agency, or sent to the OPM records center.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Human Resources Division, USMS, CS–3, Washington, DC 20530–1000.

NOTIFICATION PROCEDURE:

Same as ''Record access procedures.''

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope ''Freedom of Information Act/Privacy Act Request.'' Clearly indicate name of the requester, nature of the record sought, approximate dates of the records, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope ''Freedom of Information Act/Privacy Act Request.''

RECORD SOURCE CATEGORIES:

Information contained in this system is collected from the individual, training personnel, the Combined Federal Law Enforcement Training Academy, examining physicians, fitness coordinators, and personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

JUSTICE/USMS–008

SYSTEM NAME:

Witness Security Files Information System.

SECURITY CLASSIFICATION:

Limited Official Use.

SYSTEM LOCATION:

Witness Security and Prisoner Operations, United States Marshals Service (USMS), CS–4, Washington, DC 20530–1000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Government witnesses or potential witnesses and their families authorized to participate in the Witness Security Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains requests to enter the Witness Security Program, authorizations to enter the program, identifying and background information on the witness and/or the witness's family, funding information, and moving information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510, 524, and 561 et seq.; 5 U.S.C. 301; 44 U.S.C. 3101; 28 CFR 0.111(c); 18 U.S.C. 3521.

PURPOSE(S):

The USMS provides for the security, health and safety of government witnesses and their immediate dependants whose lives are in danger as a result of their testimony against organized crime, drug traffickers, terrorists and other major criminals. The Witness Security Files are used to plan and accomplish the major functions involved in the protection of government witnesses and their families.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information may be disclosed as follows:

(a) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding;

(b) To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(c) To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(d) Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, territorial, local, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law;

(e) To an actual or potential party to litigation or the party's authorized

representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings;

(f) To appropriate officials and employees of a federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit;

(g) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(h) To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility;

(i) To any criminal, civil, or regulatory law enforcement authority (whether federal, state, territorial, local, tribal, or foreign) where the information is relevant to the recipient entity's law enforcement responsibilities;

(j) To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in file folders and in a computerized database.

RETRIEVABILITY:

Filed and retrieved by special ID number.

SAFEGUARDS:

Access is restricted to Witness Security personnel using locks and alarm devices, passwords and/or encrypting data communications. The records are located in a restricted area of USMS Headquarters under 24-hour guard protection with entry controlled by official and electronic identification.

RETENTION AND DISPOSAL:

Witness case files will be closed upon witness termination from the Witness Security Program and retained in the custody of the USMS for 15 years, thereafter they will be transferred to the Federal Records Center and destroyed 75 years after termination. Financial records are destroyed after three years and three months in accordance with General Records Schedules 6, 7 and 8.

SYSTEM MANAGER(S) AND ADDRESS:

Witness Security and Prisoner Operations, U.S. Marshals Service, CS–4, Washington, DC 20530–1000.

NOTIFICATION PROCEDURE:

Same as the ''Record access procedures.''

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope ''Privacy Act Request.'' Clearly indicate name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope ''Privacy Act Request.''

RECORD SOURCE CATEGORIES:

Information is provided by the witnesses and their families, the court, federal, state, territorial, local, tribal and foreign law enforcement agencies, and medical personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(2) and (3), (e)(4)(G) and (H), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**. See 28 CFR 16.101.

JUSTICE/USM–009

SYSTEM NAME:

Inappropriate Communications/ Threat Information System.

SECURITY CLASSIFICATION:

Limited Official Use.

SYSTEM LOCATION:

Primary System: Investigative Services Division, U.S. Marshals Service (USMS), CS–4, Washington, DC 20530–1000.

Decentralized Segments: Each district office of the USMS maintains their own files. The addresses of USMS district offices are available on the Internet at *http://www.usdoj.gov/marshals/usmsofc.html.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have inappropriately communicated with, directly threatened, or pose a threat to USMS protectees, including federal judges, prosecutors, and other court officials. U.S. Marshals, deputies and other law enforcement officers, courtroom security, and federal property and buildings; associates of the threat or inappropriate communication initiator; and individuals reported by state or local agencies to the USMS who have threatened to harm state or local judicial officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual and automated records which consist of information related to the inappropriate communication or threat, including type of communication, the means by which it was issued, and information contained in the communication such as dates, locations, and events; analysis of the communication or threat and other internal USMS correspondence relating to the communication; biographical data including physical description,

photograph, and criminal history information—in particular, known history of violence and skills related to the nature of the threat; investigative information including associations with other individuals and dangerous gangs, extremist groups, or other organizations; information on associates including physical descriptions, photographs, numerical identifiers, addresses, driver's license information; and investigative information furnished by other federal, state, territorial, tribal, and local law enforcement or other government agencies and non-government sources.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510, and 561 *et seq.*; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 111(c) through (f).

PURPOSE(S):

The USMS is required to protect government witnesses, U.S. Attorneys and their assistants, federal jurists and other court officers; to provide for courtroom security; and to assist in protecting federal property and buildings. The USMS also conducts Federal law enforcement activities itself, *e.g.*, warrant apprehension investigations, which subject its officers to security danger. These operations require acquiring information to allow an accurate assessment of the existence and extent of the dangers posed, including specific threats, to aid in responding to specific security assignments and needs, as well as developing protective measures and plans in advance. With the information collected, officials determine and carry out operating plans, funding, personnel, and any special resources needed to counteract threat situations.

Individuals reported by State and local agencies to the USMS who have threatened to harm state or local judicial officials often appear before the federal bar as a result of appeals, civil rights suits, continuing criminal behavior, etc. Such individuals may continue their inappropriate communications or threats at the federal level. In that event, information concerning these individuals provided by the state and local agencies assists the USMS in assessing the dangers they pose to federal officials and in developing protective measures and responding to specific security requirements. This information also assists in researching inappropriate communications directed toward judicial officials of all jurisdictions to gain a full and comprehensive picture of the diverse circumstances involved, to analyze trends based upon a statistically reliable study, and to more fully address the problem.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Records or information may be disclosed:

(a) Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, territorial, local, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law;

(b) To other law enforcement agencies to develop protective measures where a specific threat is posed to their members; and to an individual or organization where the recipient is or could become the target of a specific threat;

(c) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding;

(d) To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(e) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record;

(f) To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(g) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings;

(h) To federal, state, territorial, local, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit;

(i) A record may be disclosed to designated officers and employees of state, local (including the District of Columbia), or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision;

(j) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(k) To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility;

(l) To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are kept in file folders. Duplicate copies of paper records are stored on magnetic discs.

RETRIEVABILITY:

Records are retrieved by name and identifying number or a combination of the name and number.

SAFEGUARDS:

Except as otherwise noted in paragraphs (a) and (b) under ''Routine uses,'' access to computerized records is restricted to personnel in the Investigative Services Division and in each district office by user identification and password. Paper records are maintained in filing cabinets within supervised areas. District and headquarters offices are locked during working and non-duty hours and entry is restricted to employees with official identification.

RETENTION AND DISPOSAL:

Headquarters files are destroyed one year after the initiator of the threat or inappropriate communication is no longer active or the case has been closed. District files are destroyed five years after the initiator of the threat or inappropriate communication is no longer active or the case has been closed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Investigative Services Division, U.S. Marshals Service, CS–4, Washington, DC 20530–1000.

NOTIFICATION PROCEDURE:

Same as ''Record access procedure.''

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope ''Freedom of Information/Privacy Act Request.'' Clearly indicate name of the requester, nature of the record sought, approximate date of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope ''Freedom of Information/Privacy Act Request.''

RECORD SOURCE CATEGORIES:

Information is obtained from public and confidential sources, the threat or inappropriate communication initiator, and from federal, state and local law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register.** See 28 CFR 16.101.

JUSTICE/USM–010

SYSTEM NAME:

Judicial Facility Security Index System.

SECURITY CLASSIFICATION:

Limited Official Use.

SYSTEM LOCATION:

Judicial Security Division, United States Marshals Service (USMS), CS–3, Washington, DC 20530–1000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals employed, or offered employment as contract court security officers (CSO's) by companies contracting with the USMS to provide judicial area security in federal courthouses and USMS facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

An alphabetical index contains the name, date of birth and social security number of the CSO, name of the contracting security firm (employer), completion dates and cost data for limited background investigation and orientation, district of employment, dates contract performance started and ended, posts and hours of duty and the status of employment, i.e., active or inactive. For inactive CSO's, the index contains the reason for inaction, e.g., CSO resigned; applicant rejected based on the preliminary records check; CSO removed based on Office of Personnel Management (OPM) background investigation; etc. In addition to providing abbreviated data, the index assists in locating records on the CSO related to the initial screening process for eligibility, e.g., application and preliminary checks for arrest records, which are filed under the contract number and name of the contracting security firm (employer). The index also assists in locating files containing OPM reports on the limited background investigation and internal suitability memoranda which are segregated by categories ''active'' and ''inactive.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510 and 561 *et seq.;* 5 U.S.C. 301; 44 U.S.C. 3101 and 28 CFR 0.111.

PURPOSE(S):

The USMS administers and implements courtroom security requirements for the federal judiciary and provides assistance in the protection of federal property and buildings. The Judicial Facility Security Program provides uniformed security officers and security systems and equipment for judicial area security in federal courthouses throughout the country. It is funded by the Judiciary through the Administrative Office of the U.S. Courts (AOUSC) and is managed by the USMS. This system of records is used to make security/suitability determinations in the hiring of CSO's, to monitor orientation and training, to track costs related to background investigations and attendance at Government-sponsored orientation, and to monitor contractor performance. It enables program officers to compile data for reports to AOUSC on actual and projected expenses, to list CSO's, their posts and hours of duty, and to determine turnover and reemployment ratios among CSO's.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be disclosed as follows:

(a) To any criminal, civil, or regulatory law enforcement authority (whether federal, state, territorial, local, tribal, or foreign) where the information is relevant to the recipient entity's law enforcement responsibilities;

(b) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding;

(c) To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(d) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record;

(e) To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(f) To an actual or potential party to litigation or the party's authorized

representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings;

(g) To appropriate officials and employees of a federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit;

(h) A record may be disclosed to designated officers and employees of state, territorial, local (including the District of Columbia), or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision;

(i) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(j) To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, territorial, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility;

(k) To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

An index record is stored on magnetic disks and original paper records are kept in file folders.

RETRIEVABILITY:

Records are retrieved by name of the contract CSO or contractor.

SAFEGUARDS:

Records are stored in locked metal filing cabinets during off-duty hours. Access to computerized records is controlled by restricted code to personnel on a need-to-know basis. Entry to USMS Headquarters is restricted by 24-hour guard service to employees with official and electronic identification.

RETENTION AND DISPOSAL:

Records are maintained indefinitely until a detailed records retention plan and disposal schedule is developed by the National Archives and Records Administration and the USMS.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Judicial Facility Security Program, Judicial Security Division, U.S. Marshals Service, CS–3, Washington, DC 20530–1000.

NOTIFICATION PROCEDURES:

Same as the ''Record access procedures.''

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark the letter and envelope ''Freedom of Information/Privacy Act Request.'' Clearly indicate name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope ''Freedom of Information/Privacy Act Request.''

RECORD SOURCE CATEGORIES:

Information contained in this system is collected from the individual, USMS orientation records, other law enforcement agencies, OPM and from the contractor (employer).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (d) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**. See 28 CFR 16.101.

JUSTICE/USM–011

SYSTEM NAME:

Judicial Protection Information System.

SECURITY CLASSIFICATION:

Limited Official Use.

SYSTEM LOCATION:

Primary System: Judicial Security Division, United States Marshals Service (USMS), CS–3, Washington, DC 20530–1000.

Decentralized Segments: Each USMS district office maintains their own files. The addresses of the USMS district offices are available on the Internet at *http://www.usdoj.gov/marshals/usmsofc.html*.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been directly threatened or are subject to violent threat by virtue of their responsibilities within the judicial system, e.g., U.S. Attorneys and their assistants, federal jurists and other court officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual and automated indices contain abbreviated data, e.g., case number, name of protected subject, name of control district and district number, an indication of the type and source of threat, and the means by which the threat was made. In addition to the abbreviated data named above, the complete file may contain descriptive physical data of the protectee, and other information to identify security risks and plan protective measures in advance of or during periods of active protection, e.g., individual practices and routines,

including associational memberships. Information regarding the expenditure of funds and allocation of resources assigned to the protectee may also be included in the file to enable officials to develop operating plans to counteract threat situations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510 and 561 *et seq.*, 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111 (c) through (f).

PURPOSE:

The USMS is required to protect U.S. Attorneys and their assistants, federal jurists and other court officers; to provide for courtroom security, and to assist in protecting federal property and buildings. This operation requires obtaining information to allow an accurate assessment of the individual security needs of such threatened persons to aid in developing protective measures and advance planning of specific security assignments. With the information collected, USMS officials determine and carry out operating plans, funding, personnel assignments and any special resources needed to counteract specific threat situations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information may be disclosed:

(a) To other federal, state and local law enforcement agencies to the extent that disclosure is necessary to develop and/or implement protective measures;

(b) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding;

(c) To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(d) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record;

(e) To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(f) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings;

(g) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(h) To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, territorial or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility;

(i) To any criminal, civil, or regulatory law enforcement authority (whether federal, state, territorial, local, tribal, or foreign) where the information is relevant to the recipient entity's law enforcement responsibilities;

(j) To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

An index record is stored on index cards and magnetic tape. Original paper records are kept in file folders.

RETRIEVABILITY:

Records are indexed and retrieved by name of protectee.

SAFEGUARDS:

Access to computerized records is restricted to Court Security Program personnel by assigned user code and password. In addition, records are stored in locked metal cabinets during off-duty hours. The records are located in a restricted area, and USMS Headquarters is under 24-hour guard protection with entry controlled by official and electronic identification.

RETENTION AND DISPOSAL:

Records are maintained indefinitely until a detailed records retention plan and disposal schedule is developed by the National Archives and Records Administration and the USMS.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Court Security Program, Judicial Security Division, U.S. Marshals Service, CS–3, Washington, DC 20530–1000.

NOTIFICATION PROCEDURE:

Same as the ''Record access procedures.''

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope ''Freedom of Information/Privacy Act Request.'' Clearly indicate the name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope ''Freedom of Information/Privacy Act Request.''

RECORD SOURCE CATEGORIES:

Information is obtained from individual protectees; federal, state, and local law enforcement agencies; public

and confidential sources; and threat initiator.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

JUSTICE/USM–013

SYSTEM NAME:

U.S. Marshals Service Administrative Proceedings, Claims and Civil Litigation Files

SECURITY CLASSIFICATION:

Limited Official Use

SYSTEM LOCATION:

Office of General Counsel, U.S. Marshals Service (USMS), CS–3, Washington, DC 20530–1000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed tort and employee claims against the USMS; individuals who have initiated administrative proceedings against the USMS; individuals who have filed civil suits naming the USMS and/or personnel as defendants, including those suits arising from authorized criminal law enforcement activities; individuals named as defendants in federal court actions initiated by the USMS; and USMS attorneys assigned to defend such claims and litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

In addition to the names of individuals covered by the system and the title of cases, a computerized case tracking system contains certain summary data, e.g.; a summary of correspondence and pleadings received in a case, names of parties involved; names of attorneys handling the case or matter, court in which action is brought, and civil action number, thereby facilitating location of the complete file. Cases or matters include adverse actions, grievances, unfair labor practice charges, tort claims, Equal Employment Opportunity and other employee claims, and suits against USMS employees in their official capacities, etc. Files contain correspondence/claim forms submitted by claimants and internal reports and related documents concerning the merits of the claim, attorney or staff recommendations and findings related to the claim; records on actions taken by USMS giving rise to appeals, attorney notes, recommendations and strategy for defending appeals; copies of civil actions filed and criminal investigative records related to the action, e.g., criminal investigative reports relating the underlying criminal matter which relates to or constitutes the basis of the claim or suit (including those from non-Federal law enforcement participants in USMS criminal or civil law enforcement activities), witness statements, reports of interviews, exhibits, attorney notes, pleadings, and recommendations and strategy for defending civil actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

PURPOSE(S):

Among other responsibilities, the Office of General Counsel, U.S. Marshals Service, provides legal representation to USMS management in all administrative matters including, but not limited to, adverse actions, grievances, unfair labor practices, EEO, tort and employee claim proceedings; represents the Service and its employees in district court actions brought against them for acts taken in the course of official duties; and represents the Service in other actions in which its interests are involved. Effective representation in such matters requires that records be retrievable by individual identifiers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records maintained in this system of records may be disseminated as follows:

(a) Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, territorial, local, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law;

(b) To any federal, state or local agency, organization or individual to the extent necessary to elicit information or witness cooperation if there is reason to believe the recipient possesses information related to the case or matter;

(c) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding;

(d) To appropriate officials and employees of a federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit;

(e) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings;

(f) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(g) To the news media and the public including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(h) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record;

(i) To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(j) A record may be disclosed to designated officers and employees of state, territorial, local (including the District of Columbia), or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipients agency's decision;

(k) To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee

regarding a matter within that persons former area of responsibility;

(l) To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Administrative claim, appeal, and litigation files are stored in standard file cabinets. The computerized case tracking system and duplicate copies of some paper records are stored on magnetic discs.

RETRIEVABILITY:

Records are retrieved by name of claimant, litigant or USMS attorney, or by caption of civil action or administrative proceeding.

SAFEGUARDS:

Access to computerized records is restricted to Office of General Counsel personnel by user identification and passwords. In addition, files are stored in metal filing cabinets within the Office of General Counsel, USMS Headquarters during off-duty hours. Access to USMS Headquarters is restricted to employees with official identification.

RETENTION AND DISPOSAL:

Records in the case tracking system are retained indefinitely. Claim files are destroyed after 7 years. Litigation files are destroyed after 10 years. Cases designated by the General Counsel as significant or precedential are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Office of General Counsel, U.S. Marshals Service, CS–3, Washington, DC 20530–1000.

NOTIFICATION PROCEDURE:

Same as ''Record access procedures.''

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope ''Freedom of Information/Privacy Act Request.'' Clearly indicate name of the requester, nature of the record sought, approximate dates of the records, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above. Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope ''Freedom of Information/Privacy Act Request.''

RECORD SOURCE CATEGORIES:

The sources of information contained in this system are the individual claimant/litigant, USMS officials, law enforcement agencies, statements of witnesses and parties, transcripts of depositions and court proceedings, administrative hearings and arbitrations, and work product of staff attorneys and legal assistants working on a particular case or matter.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted certain categories of records in this system from subsections (c)(3) and (4); (d); (e)(2) and (3); (e)(4)(G) and (H); (e)(8); (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) or (k)(5). The system is exempted pursuant to subsection (j)(2) only to the extent that information in a record pertaining to a particular individual relates to a criminal investigation which relates to or constitutes the basis of a particular suit or claim. The system is exempted pursuant to subsection (k)(5) only to the extent necessary to protect a confidential source. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e) and have been published in the **Federal Register**. See 28 CFR 16.101.

JUSTICE/USM–016

SYSTEM NAME:

U.S. Marshal Service (USMS) Key Control Record System.

SECURITY CLASSIFICATION:

Limited Official Use.

SYSTEM LOCATION:

Primary system: Judicial Security Division, United States Marshals Service, CS–3, Washington, DC 20530.

Decentralized segments: USMS headquarters division offices that issue keys to their respective employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the USMS who have been issued building or office keys for USMS Headquarters or District Office locations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contained in this system consist of an automated or manual index which may include the name of the employee to whom a building or office key is issued; the social security number (only when two or more employees have identical names, including middle initial); unique key identification code number; key type (e.g., grand master, master, submaster, change); storage container hook number; description (e.g., number identification) of door(s), room(s), and/or area(s) the key opens or accesses; transactions type and/or status (e.g., key issued, transferred, retrieved, lost, broken) and transaction date; and, any other appropriate comment, e.g., comments regarding key, door, room, area, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

PURPOSE(S):

The USMS Key Control Record System serves as a record of keys issued and facilitates continuing security at USMS Headquarters locations. Records are maintained to assist in restricting office and work area access to authorized USMS personnel by controlling, monitoring and tracking keys issued. In addition, the records assist in identifying any repairs, changes, or additional security measures that may be necessary as a result of lost or broken keys.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

RECORDS OR INFORMATION MAY BE DISCLOSED:

(a) Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate Federal, State, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or

prosecuting such violation or enforcing or charged with implementing such law;

(b) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(c) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(d) To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(e) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record;

(f) To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(g) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings;

(h) To a former employee of the Department for purposes of: responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility;

(i) To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated index records are stored on magnetic disks. Paper copies of automated records are kept in file folders and original paper records of the manual index are stored in card files.

RETRIEVABILITY:

Records are retrieved by name of the individuals covered by the system.

SAFEGUARDS:

Access to these records is restricted to personnel of the USMS, Office of Security. Computerized records may be accessed only by assigned code and password. Paper records are located in a restricted area and are maintained in metal filing cabinets or safes which are locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are retained for three years after turn-in of the key at which time they are destroyed (General Records Schedule 18).

SYSTEM MANAGER(S) AND ADDRESS:

Judicial Security Division, United States Marshals Service, CS–3, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Same as the ''Records access procedures.''

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope ''Freedom of Information/Privacy Act Request.'' Clearly indicate the name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope ''Freedom of Information/Privacy Act Request.''

RECORD SOURCE CATEGORIES:

Information contained in this system is collected from the individual and the system manager.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

JUSTICE/USM–017

SYSTEM NAME:

Judicial Security Staff Inventory.

SECURITY CLASSIFICATION:

Limited Official Use.

SYSTEM LOCATION:

Judicial Security Division (JSD), U.S. Marshals Service (USMS), CS–3, Washington, DC 20530–1000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USMS employees, contract employees, and other individuals assigned to JSD.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contained in this computerized system consist of (1) an individual's name, date of birth, social security number, and type of passport with expiration date; (2) inventory of accountable property assigned to individual, including: weapon, protective body armor with expiration date of warranty, vehicle, credit cards, cell phone, pager, and office equipment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 28 U.S.C. 509 and 510; 44 U.S.C. 3101 and 28 CFR 0.111.

PURPOSE(S):

This system will be used to assist JSD management in the effective control of accountable property and to ensure that JSD personnel maintain the equipment necessary and in proper working order to perform their functions, especially law enforcement functions, and to respond quickly to urgent operational law enforcement activities as they develop.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

RECORDS OR INFORMATION MAY BE DISCLOSED:

(a) Where a record, either alone or in conjunction with other information,

indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, territorial, local, tribal or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law;

(b) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding;

(c) To the news media and the public, including disclosure pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(d) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record;

(e) To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(f) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings;

(g) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(h) To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility;

(i) To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Departments efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in a computerized database.

RETRIEVABILITY:

Information is retrieved by name and social security number.

SAFEGUARDS:

Access is limited to designated staff of JSD by assigned user code and password. JSD is located in a restricted area of USMS Headquarters which is under 24–hour guard protection with entry controlled by official and electronic identification.

RETENTION AND DISPOSAL:

Files are maintained until the employee leaves JSD at which time all records on the individual will be erased from the database.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Judicial Security Division, U.S. Marshals Service, CS–3, Washington, DC 20530–1000.

NOTIFICATION PROCEDURE:

Same as the ''Record access procedures.''

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope ''Privacy Act Request.'' Clearly indicate the name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager identified above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope ''Privacy Act Request.''

RECORD SOURCE CATEGORIES:

Information is obtained from subject JSD employees, JSD office and the accountable property records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

JUSTICE/USM–018

SYSTEM NAME:

United States Marshals Service Alternative Dispute Resolution (ADR) Files and Database Tracking System.

SECURITY CLASSIFICATION:

Limited official use.

SYSTEM LOCATION:

Human Resources Division, United States Marshals Service (USMS), CS–3, Washington, DC 20530–1000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the USMS designated as complainants, who select ADR mediation as the mechanism to resolve disagreements, and designated respondents to such complaints.

CATEGORIES OF RECORDS IN THE SYSTEM:

ADR files contain a statement of issue(s) which include type of dispute, parties involved, and date ADR requested or notified by complainant; mediator appointed; correspondence or letters which may include ground rules, acknowledgment of time requirements and issues related thereto; pre-conference agreements; minutes of ADR activity; written agreement, and dispute resolution and date resolved.

The ADR data tracking system contains names of complainant and respondent; type of dispute, e.g., job assignment, leave, promotion; source of complaint, e.g., Equal Employment Opportunity (EEO) or grievance; process utilized, e.g., mediation, conciliation, fact finding; district/office; ADR contact individual; date ADR request received;

date resolved; and calculation of time spent in resolving matters and, if applicable, name of mediator.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

PURPOSE(S):

The ADR process is a parallel system to the grievance process and Equal Employment Opportunity (EEO) complaint process which offers the possibility of a simpler, quicker, less expensive, and less adversarial resolution of disputes. The ADR files are used to facilitate the effective operation of the ADR process in resolving discrimination complaints and workplace grievances by USMS employees and applicants for employment. The ADR database is used to track case activity, primarily for completion of reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

RECORDS OR INFORMATION MAY BE DISCLOSED:

(a) Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, territorial, tribal or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law;

(b) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding;

(c) To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(d) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record;

(e) To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(f) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings;

(g) To appropriate officials and employees of a federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract, or the issuance of a grant or benefit;

(h) A record may be disclosed to designated officers and employees of state, territorial, local (including the District of Columbia), or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision;

(i) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(j) To a former employee of the Department for purposes of: responding to an official inquiry by a Federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility;

(k) To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in standard file cabinets. Computerized records are stored in a database server in a secured file room.

RETRIEVABILITY:

Records are retrieved by name of employee.

SAFEGUARDS:

Access is restricted to authorized personnel with the need to know in the Human Resources Division, Equal Employment Opportunity Division, and the Office of General Counsel. Computerized records may be accessed only by assigned code and password. In addition, records are stored in metal file cabinets within the Human Resources Division and access to USMS headquarters is controlled by 24-hour guard services.

RETENTION AND DISPOSAL:

Records are maintained for 7 years and then data in the system, as well as hard copies, are purged.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Human Resources Division, USMS, CS–3, Washington, DC 20530–1000.

NOTIFICATION PROCEDURE:

Same as ''Record access procedures.''

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope ''Privacy Act Request.'' Clearly indicate name of the requester, nature of the record sought, approximate dates of the records, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager in accordance with the procedures outlined above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Employee complainants, who select the ADR process to resolve their disputes; respondents; and the ADR mediator.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–11543 Filed 6–15–07; 8:45 am]

BILLING CODE 4410–04–P

DEPARTMENT OF LABOR

Office of the Secretary

Job Corps: Preliminary Finding of No Significant Impact (FONSI) for the Proposed Job Corps Center To Be Located North of Roosevelt Highway Between Washington Road and Interstate 285 in College Park, GA

AGENCY: Office of the Secretary (OSEC), Department of Labor.

ACTION: Preliminary Finding of No Significant Impact (FONSI) for the Proposed Job Corps Center to be located north of Roosevelt Highway between Washington Road and Interstate 285 in College Park, Georgia.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Office of the Secretary (OSEC), in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared for a proposed new Job Corps Center to be located in College Park, Georgia, and that the proposed plan for a new Job Corps Center will have no significant environmental impact. This Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Comments must be submitted by July 18, 2007.

ADDRESSES: Any comment(s) are to be submitted to Michael F. O'Malley, Office of the Secretary (OSEC), Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–3108 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Copies of the EA are available to interested parties by contacting Michael F. O'Malley, Architect, Unit Chief of Facilities, U.S. Department of Labor, Office of the Secretary (OSEC), 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–3108 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This Environmental Assessment (EA) summary addresses the proposed construction of a new Job Corps Center near College Park, Georgia. The site for the proposed Job Corps Center is comprised of four parcels of land owned by VFH Captive Insurance Company which total approximately 25.4 acres. The property is currently undeveloped and wooded with the exception of three abandoned residential properties and an abandoned automotive repair garage.

The new center will require construction of ten (10) buildings including eight (8) single-story buildings and two (2) two-story buildings. The proposed Job Corps center will provide housing, training, and support services for approximately 515 students. The current facility utilization plan includes include a vocational-educational building, cafeteria/culinary arts building, child development center, recreation building, medical/dental building, maintenance/warehouse building, administration offices, and new dormitories.

The construction of the Job Corps Center on this proposed site would be a positive asset to the area in terms of environmental and socioeconomic improvements, and long-term productivity. The proposed Job Corps Center will be a new source of employment opportunity for people in the Atlanta Metropolitan area. The Job Corps program provides basic education, vocational skills training, work experience, counseling, health care and related support services. The program is designed to graduate students who are ready to participate in the local economy.

The proposed project will not have any significant adverse impact on any natural systems or resources. No state or federal threatened or endangered species (proposed or listed) have been identified on the subject property.

The Job Corps Center construction will not affect any existing historic structures, as there are no historic or archeologically sensitive areas on the proposed property parcel.

Air quality and noise levels should not be affected by the proposed development project. Due to the nature of the proposed project, it would not be a significant source of air pollutants or additional noise, except possibly during construction of the facility. All construction activities will be conducted in accordance with applicable noise and air pollution regulations, and all pollution sources will be permitted in accordance with applicable pollution control regulations.

The proposed Job Corps Center is not expected to significantly increase the vehicle traffic in the vicinity, since many of the Job Corps Center residents will either live at the Job Corps Center or use public transportation. While some Job Corps Center students and staff may use personal vehicles, their number would not result in a significant increase in vehicular traffic in the area. Access is planned from Roosevelt Highway. Road improvements and/or installation of signals to facilitate site ingress/egress do not appear necessary. Public transportation will be provided by Metropolitan Atlanta Rapid Transit Authority which provides bus and shuttle routes throughout Metropolitan Atlanta. Bus Route 88 travels along Washington Road which bounds the west side of the proposed Job Corp Center site. There are a number of connecting bus routes within walking distance of the site.

The proposed project will not have any significant adverse impact on the surrounding water, sewer, and storm water management infrastructure. The new buildings to be constructed for the proposed Job Corps Center will be tied in to the existing City of Atlanta Watershed Management system. The new buildings to be constructed for the proposed Job Corps Center will also be tied in to the existing Fulton County wastewater treatment system.

Georgia Power would provide the electricity for the site. This is not expected to create any significant impact to the regional utility infrastructure.

No significant adverse affects to local medical, emergency, fire, and police services are anticipated. The primary medical provider located closest to the proposed Job Corps parcel is South Fulton Medical Center, approximately 6 miles from the proposed Job Corps Center. Nevertheless, the Job Corps center will have a small medical and dental facility as part of the campus for use by the residents, as necessary for providing a ward for sick students with the flu or small non-emergency incapacities. Security services at the Job Corps will be provided by the center's security staff. Law enforcement services are provided by the Fulton County Police Department, located

approximately 2.3 miles from the proposed project site. Local fire stations are provided by the Fulton County Fire Department. The fire department has two stations which operate 24 hours a day near the proposed site. Both stations are less than 10 minutes away and will provide all of the necessary fire protection for the center in the near future.

The proposed project will not have a significant adverse sociological effect on the surrounding community. Similarly, the proposed project will not have a significant adverse effect on demographic and socioeconomic characteristics of the area.

The alternatives considered in the preparation of this FONSI were as follows: (1) No Action; and (2) Continue Project as Proposed. The No Action alternative was not selected. The U.S. Department of Labor's goal of improving the Job Corps Program by improving the learning environment at Job Corps Centers would not be met under this alternative. Due to the suitability of the proposed site for establishment of a new Job Corps Center, and the absence of any identified significant adverse environmental impacts from locating a Job Corps Center on the subject property, the ''Continue Project as Proposed'' alternative was selected.

Based on the information gathered during the preparation of the EA, no environmental liabilities, current or historical, were found to exist on the proposed Job Corps Center site. The construction of the Job Corps Center at the Roosevelt Highway between Washington Road and Interstate 285 in College Park, Georgia will not create any significant adverse impacts on the environment.

Dated: June 6, 2007.

Esther R. Johnson,

National Director of Job Corps.

[FR Doc. E7–11714 Filed 6–15–07; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Center for Faith-Based & Community Initiatives; Call for Papers; White House National Summit on Prisoner Reentry

November 27–28, 2007.

Summary: The White House and the U.S. Departments of Labor and Justice issue this call for papers to evaluate whether an offender's sustained participation in and completion of any pre-release program in a correctional system or post-release service or program through faith-based and community organizations impacts ex-offender recidivism. We are seeking paper concepts for recently completed papers or papers that will be completed prior to the conference. We encourage contributions by researchers from academia, state or local agencies, business organizations, labor associations, research consulting firms and other relevant organizations.

Context: Each year more than 650,000 inmates are released from Federal and State prisons and return to their communities and families. Released prisoners face many challenges that contribute to a return to criminal activity, re-arrest, and re-incarceration. Joblessness among ex-prisoners has been linked to recidivism rates.[1]

Unemployment among ex-prisoners has been estimated at between 25 and 40 percent.[2] Prisoners also demonstrate low levels of educational attainment. Forty percent of adult state prisoners are functionally illiterate and over half of state parole entrants are not high school graduates.[3]

The White House National Summit on Prisoner Reentry will focus on issues related to impacts, trends, and challenges of prisoner reentry into society, both pre-release and post-release. In addition, this conference will focus on the positive outcomes that faith-based and community organizations and the correctional system can have on lowering recidivism and raising employment for ex-offenders.

Possible topics may include, but are not limited to:

1. The impact on recidivism,[4] if any, of an offender's [5] sustained participation in and completion of:

- Any mentoring program involving a volunteer meeting (in person or by video-conference) at least monthly with an offender for at least the last 90 days before and/or the first 90 days after release;
- Any post-release program administered by a faith-based or community organization that emphasizes job training, job placement, mentoring, or other transitional services;
- Regular, sustained pre-release participation by inmates in vocational training or compensated, skilled prison industry;
- Any pre-release program in which inmates have parenting-enrichment training and regular (at least semi-monthly) contact (in person or by video-conference) with one or more of their minor children;
- Any pre-release program in which female inmates have daily contact with their infant children on-site;
- Regular (at least weekly), sustained pre-release participation by inmates in faith-based or philosophical meetings;
- Any post-release program that includes a housing component;
- Any pre-release program (residential or non-residential) in a correctional system in which inmates pursue a curriculum on reintegration into their community from a faith-, character-, or philosophically-based perspective;
- Any post-release program of re-entry services (e.g., job placement, substance abuse therapy, transitional housing) in which ex-offenders have a genuine choice of service providers, faith-based and secular;
- Any pre-release program in which most or all inmates apply and are selected to be housed in the same correctional facility wherein religious or cognitive behavior curriculum and intensive religious programming are provided or required (including ''faith-based prisons'');

2. A survey of the domestic and/or international academic literature on any of the offender reentry programs listed as a topic under part 1.

3. Other research on the impact of Faith-Based and Community Organizations on the ability of ex-offenders to successfully reintegrate into society following incarceration (with a particular emphasis on employment and recidivism).

Sponsoring Agencies

The mission of the Department of Labor (DOL) Center for Faith-Based & Community Initiatives (CFBCI) is to empower faith-based and community organizations as they help their neighbors prepare for, enter, and thrive in the workforce. The CFBCI works to cultivate public-nonprofit-private partnerships nationwide to make services more effective such as new grant opportunities and pilot projects, cost-free training for faith-based and

[1] According to the DOJ, almost three out of five returning inmates will be rearrested and charged with new crimes within three years of their release from prison.

[2] Joan Petersilia, When Prisoners Come Home: Parole and Prisoner Reentry (Oxford : Oxford University Press, 2003), 119 (citing Peter Finn, Successful Job Placement for Ex-Offenders: The Center for Employment Opportunities. Washington, DC: National Institute of Justice).

[3] Joan Petersilia, When Prisoners Come Home: Parole and Prisoner Reentry (Oxford: Oxford University Press, 2003), 32 (citing Gwen Rubinstein, Getting to Work: How TANF Can Support Ex-Offender Parents in the Transition to Self-Sufficiency (Washington, DC: Legal Action Center, 2001).

[4] Defined most liberally as re-arrest (not necessarily re-incarceration) for parole violation or for new offense within 36 months after release.

[5] Defined as adult or juvenile, male or female incarcerated offender.

community organizations to effect program practices and grant writing, research to better understand the role nonprofits can play in social services, and other innovative projects.

The Task Force for Faith-Based and Community Initiatives (TFFBCI) of the U.S. Department of Justice (DOJ) provides assistance to faith-based and community organizations in identifying funding opportunities within the Federal government for which they are eligible to apply. DOJ administers programs to provide assistance to victims of crime, prisoners and ex-offenders, and women who suffer domestic violence. In addition, DOJ has initiatives to target gang violence and at-risk youth.

Time and Place: The meeting will be held from on November 27–28, 2007 in Los Angeles, CA.

Submission of Papers: All paper concepts submitted will be reviewed by a panel of DOL and DOJ experts in the prisoner reentry arena and presenters will be notified if their papers are selected. Papers selected for the conference will be published as part of our White House National Summit on Prison Reentry Paper Series. If interested, please submit your paper concept in hard copy and diskette/CD (Word Perfect or Word) by September 30, 2007. Paper concepts should be doubled-spaced and single sided. You will be notified by October 26, 2007 if your paper is selected; you will have to confirm your attendance by November 9, 2007. Please send your paper concept to: Christopher Stio, U.S. Department of Labor, Center for Faith-Based & Community Initiatives, 200 Constitution Avenue, NW., Room S–2235, Washington, DC 20210. Christopher Stio may be reached at (202) 693–6450. We also encourage submitting abstracts for papers that have not yet been completed, but will be completed before the deadline for submission of papers. All papers submitted, including abstracts, must be the original work of the author(s) submitting such materials. Each author whose paper is selected for publication will be required to verify in writing that his/her submission(s) is an original work of authorship. In addition, the author of each submission grants to the U.S. Government a royalty-free, irrevocable license to reproduce, distribute, create derivative works from, and publicly perform and display such work in any form or medium, including print or electronic, without geographic limitation.

Public Participation: This Conference is open to the public; there is no registration fee.

Signed at Washington, DC, this 12th day of June, 2007.

Rhett Butler,

Director, U.S. Department of Labor, Center for Faith-Based and Community Initiatives.

[FR Doc. 07–2959 Filed 6–15–07; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Final Rule on Plan Loans to Participants and Beneficiaries

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration is soliciting comments on the proposed extension of the information collection provisions of its regulation relating to loans to plan participants and beneficiaries who are parties in interest with respect to the plan (29 CFR 2550.408b-1). A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice. ICRs also are available at *reginfo.gov* (*http://www.reginfo.gov/public/do/PRAMain*).

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before August 17, 2007.

ADDRESSES: Joseph S. Piacentini, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

The Employee Retirement Income Security Act of 1974 (ERISA) prohibits a plan fiduciary from causing the plan to engage in a transaction if he knows or should know that such transaction constitutes direct or indirect loan or extension of credit between the plan and a party in interest. ERISA section 408(b)(1) exempts from this prohibition loans from a plan to parties in interest who are participants and beneficiaries of the plan, provided that certain requirements are satisfied. In final regulations published in the **Federal Register** on July 20, 1989 (54 FR 30520), the Department provided additional guidance on section 408(b)(1)(C), which requires that loans be made in accordance with specific provisions in the plan. This ICR therefore relates to the provisions plan documents must include in order that a plan may make loans to participants.

II. Current Actions

This notice requests public comment on the Department's request for extension of OMB approval of the information collection contained in its final rule at 29 CFR 2550.408b–1. After considering all the responses to this notice, the Department intends to submit an ICR to OMB for continuing approval. The Department is not proposing any changes to the existing ICR at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Regulation Relating to Loans to Plan Participants and Beneficiaries who are Parties in Interest with Respect to the Plan.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0076.

Affected Public: Individuals or households; businesses or other for-profit entities; not-for-profit institutions.

Total Respondents: 1,700.

Frequency of Responses: On occasion.

Responses: 1,700.

Estimated Total Burden Hours: 0.

Estimated Total Burden Cost (Operating and Maintenance): $428,000.

III. Desired Focus of Comments

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's burden estimate in the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including suggestions for appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting responses to be submitted electronically.

Comments submitted in response to this notice will be summarized and possibly included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: June 8, 2007.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E7–11668 Filed 6–15–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0051]

The Hydrostatic Testing Provision of the Standard on Portable Fire Extinguishers; 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 comment concerning its proposal to extend OMB approval of the information collection requirements specified in the Hydrostatic Testing Provision of the Standard on Portable Fire Extinguishers (29 CFR 1910.157(f)(16)). The hydrostatic testing provision requires employers to certify that portable fire extinguishers have been hydrostatically tested as prescribed by the Standard by preparing a certification record upon completion of the test. The record must be maintained on file and made available to OSHA compliance staff.

DATES: Comments must be submitted (postmarked, sent, or received) by August 17, 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, Docket No. OSHA–2007–0051, 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–2007–0051). 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 *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 may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney 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 following section describes who uses the information in the certification record, as well as how they use it. The purpose of the requirement is to reduce employees' risk of death or serious injury by ensuring that portable fire extinguishers are in safe operating condition.

Test Records (§ 1910.157(f)(16))

Paragraph (f)(16) requires employers to develop and maintain a certification record of hydrostatic testing of portable fire extinguishers. The certification record must include the date of inspection, the signature of the person who performed the test, and the serial number (or other identifier) of the fire extinguisher that was tested.

Disclosure of Test Certification Records

The certification record must be made available to the Assistant Secretary or his/her representative upon request. The certification record provides assurance to employers, employees, and OSHA compliance officers that the fire extinguishers have been hydrostatically tested in accordance with and at the intervals specified in § 1910.157(f)(16), thereby, ensuring that they will operate properly in the event employees need to use them. Additionally, these records provide the most efficient means for the compliance officers to determine that an employer is complying with the hydrostatic testing provision.

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, 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 that OMB extend its approval of the information collection requirements contained in the Hydrostatic Testing Provision of the Standard on Portable Fire Extinguishers (29 CFR 1910.157(f)(16)). The Agency is requesting to increase its current burden hour estimate associated with this Standard from 123,180 hours to 125,952 hours for a total increase of 2,772 hours. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: The Hydrostatic Testing Provision of the Standard on Portable Fire Extinguishers (29 CFR 1910.157(f)(16)).

OMB Number: 1218–0218.

Affected Public: Business or other for-profit.

Number of Respondents: 9,202,500.

Frequency: On occasion.

Average Time Per Response: Varies from one minute (.02 hour) to maintain a certification record of fire extinguishers tested off-site to 33 minutes (.55 hour) to test fire extinguishers on-site and to generate and maintain the certification record.

Estimated Total Burden Hours: 125,952.

Estimated Cost (Operation and Maintenance): $16,687,200.

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 (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2007–0051). 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 name, date, and the 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 *www.regulations.gov.* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *www.regulations.gov.* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate 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 June 7, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E7–11641 Filed 6–15–07; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL COUNCIL ON DISABILITY

Youth Advisory Committee Meetings (Teleconferences)

Federal Register Citation of Previous Announcement: **Federal Register**: October 11, 2006 (Volume 71, Number 196) [Notices] [Page 59838].

Previously Announced Times and Dates of the Meetings: July 24, 2007, 3:30 p.m. Eastern; September 18, 2007, 3:30 p.m. Eastern.

Changes to Times and Dates of the Meetings: August 14, 2007, 3:30 p.m. Eastern; September 25, 2007, 3:30 p.m. Eastern.

Place: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

Agency: National Council on Disability (NCD).

Status: All parts of these conference calls will be open to the public for observation only. Those interested in observing on conference calls should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for each conference call.

Agenda: Roll call, announcements, reports, new business, adjournment.

FOR FURTHER INFORMATION CONTACT: Gerrie Drake Hawkins, PhD, Senior Program Analyst, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *youth@ncd.gov* (e-mail).

Accommodations: Those needing reasonable accommodations should notify NCD at least two weeks before this meeting.

Language Translation: In accordance with Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for this meeting should notify NCD at least two weeks before this meeting.

Youth Advisory Committee Mission: The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

Dated: June 11, 2007.

Mark S. Quigley,

Acting Co-Executive Director.

[FR Doc. E7–11695 Filed 6–15–07; 8:45 am]

BILLING CODE 6820–MA–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Meeting

TIME AND DATE: 10 a.m., Thursday, June 21, 2007.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed Rule: Section 701.23 of NCUA's Rules and Regulations, Purchase, Sale, and Pledge of Eligible Obligations.
2. Prompt Corrective Action Reform Proposal.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Hattie Ulan,

Acting Board Secretary,

[FR Doc. 07–3027 Filed 6–14–07; 3:51 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board—Committee on Strategy and Budget; Sunshine Act Meetings; Notice

The National Science Board's Committee on Strategy and Budget, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5 and 1863(k)), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a meeting for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: Monday, June 18, 2007, 11 a.m.

SUBJECT MATTER: Discussion of the FY 2009 National Science Foundation Budget.

STATUS: Closed.

This meeting will be held by teleconference originating from the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb*) for information or schedule updates, or contact: Annette M. Dreher, National Science Board Office, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Russell Moy,

Attorney Advisor.

[FR Doc. E7–11734 Filed 6–15–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–1113]

Notice of License Renewal Request for Global Nuclear Fuel—Americas, LLC, Wilmington, North Carolina, and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license renewal application, and opportunity to request a hearing.

DATES: A request for a hearing must be filed by August 17, 2007.

FOR FURTHER INFORMATION CONTACT: Merritt Baker, Project Manager, Fuel Facility Licensing Directorate, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–6155; fax number: (301) 415–5955; e-mail: *mnb@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U. S. Nuclear Regulatory Commission (NRC) has received, by letter dated April 2, 2007, a license renewal application from Global Nuclear Fuel–Americas, LLC (GNF—A), requesting renewal of License No. SNM–1097 for its fuel fabrication facility located in Wilmington, North Carolina. License No. SNM–1097 authorizes the licensee to possess and use special nuclear material for the manufacture of fuel for nuclear power plants.

The Wilmington facility has been licensed by the Atomic Energy Commission and its successor, the NRC, to manufacture low-enriched uranium fuel for nuclear power plants. The license was renewed in 1997 for a period of 10 years, expiring on June 30, 2007. By application dated April 2, 2007, GNF—A requested renewal of their license for a period of 40 years. The application addresses various topics, including ones related to emergency planning and physical security. The NRC will review the license renewal application for compliance with applicable safety requirements set forth in NRC regulations in Title 10 of the Code of Federal Regulations (10 CFR), which implement the Atomic Energy Act of 1954, as amended. The license renewal application included an Environmental Report, which the NRC will review in its evaluation of environmental issues, as required by 10 CFR Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions, and the National Environmental Policy Act.

An NRC administrative review, documented in a letter to GNF-A dated May 14, 2007 (ML071170603), found the application acceptable to begin the NRC's more detailed technical review. Because GNF-A filed the application for renewal not less than thirty (30) days before the expiration of the date stated in the existing license, the existing license will not expire until the Commission makes a final determination on the renewal application, in accordance with the timely renewal provision of 10 CFR 70.38(a)(1). If the NRC approves the renewal application, the approval will be documented in NRC License No. SNM–1097. However, as indicated above, before approving the proposed renewal, the NRC will make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. The safety findings will be documented in a Safety Evaluation Report.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a license renewal. In accordance with the general requirements in Subpart C of 10 CFR Part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party, must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302 (a), a request for a hearing must be filed with the Commission either by:

1. First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, Attention: Rulemakings and Adjudications Staff;
2. Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff, between 7:45 a.m. and 4:15 p.m., Federal workdays;
3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov;* or
4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

In accordance with 10 CFR 2.302(b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, Global Nuclear Fuel—Americas, LLC, 3901 Castle Hayne Road, Wilmington, North Carolina, 28402, Attention: Scott Murray; and

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or via e-mail to *ogcmailcenter@nrc.gov.*

The formal requirements for documents contained in 10 CFR 2.304(b), (c), (d), and (e), must be met. In accordance with 10 CFR 2.304 (f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304(b), (c), and (d), as long as an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304(b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by August 17, 2007.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the license renewal application (including, if applicable, the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is filed, such as the application, supporting safety analysis report, environmental report or other supporting documents filed by an applicant or licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requester/petitioner shall file contentions based on the applicant's environmental report. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental analysis, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Each contention is to be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns safety issues relating to matters discussed or referenced in the Safety Evaluation Report for the proposed action.

2. Environmental—primarily concerns environmental issues relating to matters discussed or referenced in the Environmental Report for the proposed action.

3. Emergency Planning—primarily concerns issues relating to matters discussed or referenced in the Emergency Plan as it relates to the proposed action.

4. Physical Security—primarily concerns issues relating to matters discussed or referenced in the Physical Security Plan as it relates to the proposed action.

5. Miscellaneous—does not fall into one of the categories outlined above.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309 (g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

Document	ADAMS accession No.	Date
Transmittal letter	ML071000128	4/2/07
License renewal application	ML071000128	4/2/07
Site Environmental Report Supplement	ML071000137	4/2/07
Environmental Report Supplement Appendix	ML071000144	4/2/07
NRC acceptance letter	ML071170603	5/14/07

If you do not have access to the NRC's ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR), reference staff at 1–800–397–4209, 301–415–4737, or via e-mail to *pdr@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O–1–F–21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 11th day of June, 2007.

For the Nuclear Regulatory Commission.

Gary Janosko,

Deputy Director, Fuel Facility Licensing Directorate, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E7–11686 Filed 6–15–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–09022]

Notice of License Termination and Release of the SC Holdings, Inc. Site in Bay City, MI for Unrestricted Use

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license termination and site release for unrestricted use.

FOR FURTHER INFORMATION CONTACT: David W. Nelson, Materials Decommissioning Section, Division of Waste Management and Environmental Protection, NRC, Washington, DC 20555; telephone: (301) 415–6626; fax: (301) 415–5397; or e-mail at: *dwn@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR part 20 subpart E, the U.S. Nuclear Regulatory Commission (NRC) is providing notice that it has terminated license SUC–1565 for the SC Holdings, Inc., and has released its Bay City, Michigan site for unrestricted use. The Licensee's requests for an amendment to authorize decommissioning of its Bay City, Michigan site were previously noticed in the **Federal Register** on March 2, 2006.

In a letter dated December 5, 2006, SC Holdings, Inc. provided final radiological status surveys to demonstrate that the site met the license termination criteria in 10 CFR part 20 subpart E. NRC staff conducted numerous inspections and confirmatory surveys including the collection of samples and independent measurements of on-site soils and building surfaces.

The NRC staff evaluated SC Holdings, Inc. requests and reviewed the results of the final radiological surveys. Based on those reviews, the staff determined that the site met the unrestricted release criteria in 10 CFR part 20 subpart E. The staff prepared a Safety Evaluation Report (SER) (ADAMS ML070430246) to support its termination of the SC Holdings, Inc. Bay City license.

II. Further Information

In accordance with 10 CFR part 2.390 of the NRC's ''Rules of Practice,'' details with respect to this action, including the SER, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the termination letter with enclosed SER, titled ''Release of the SC Holdings, Inc., Bay City, Michigan, and Termination of License (License No. SUC–1565)'' is ML070430246. If you do not have access to ADAMS or if there are problems in accessing a document located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

This document may also be viewed electronically on the public computers located at the NRC's PDR, O–1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at NRC, Rockville, MD, this day of June 1, 2007.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery, Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E7–11710 Filed 6–15–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Commonwealth of Pennsylvania: Draft NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the Commonwealth of Pennsylvania

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed Agreement with the Commonwealth of Pennsylvania.

SUMMARY: By letter dated November 9, 2006, Governor Edward G. Rendell of Pennsylvania requested that the U. S. Nuclear Regulatory Commission (NRC or Commission) enter into an Agreement with the Commonwealth as authorized by Section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed Agreement, the Commission would give up, and Pennsylvania would take over, portions of the Commission's regulatory authority exercised within the Commonwealth. As required by the Act, the NRC is publishing the proposed Agreement for public comment. The NRC is also publishing the summary of an assessment by the NRC staff of the Pennsylvania regulatory program. Comments are requested on the proposed Agreement, especially its effect on public health and safety. Comments are also requested on the draft NRC staff assessment, the adequacy of the Pennsylvania program, and the Commonwealth's program staff, as discussed in this notice.

The proposed Agreement would release (exempt) persons who possess or use certain radioactive materials in Pennsylvania from portions of the Commission's regulatory authority. The Act requires that the NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR part 150.

DATES: The comment period expires July 18, 2007. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: Written comments may be submitted to Mr. Michael T. Lesar, Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001. Comments may be submitted electronically at *nrerep@nrc.gov*.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at (800) 397–4209, or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Copies of comments received by NRC may be examined at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O–1–F21, Rockville, Maryland. Copies of the request for an Agreement by the Governor of Pennsylvania including all information and documentation submitted in support of the request, and copies of the full text of the NRC Draft Staff Assessment are also available for public inspection in the NRC's Public Document Room—ADAMS Accession Numbers: ML070240128, ML063400549, ML070240055, ML063330295, ML070290041, ML070290046, ML070260116, ML070260179, ML070260026, ML070260119, ML070250054, ML063400559, ML070790604, ML070790609, ML070790612, ML070790616, ML070790620, and ML070890378.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew N. Mauer, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–3962 or e-mail to *anm@nrc.gov*.

SUPPLEMENTARY INFORMATION: Since Section 274 of the Atomic Energy Act of 1954, as amended (Act) was added in 1959, the Commission has entered into Agreements with 34 States. The Agreement States currently regulate approximately 17,600 Agreement material licenses, while the NRC regulates approximately 4,400 licenses. Under the proposed Agreement, approximately 690 NRC licenses will transfer to Pennsylvania. The NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of the requirement.

I. Background

(a) Section 274b of the Act provides the mechanism for a State to assume regulatory authority, from the NRC, over certain radioactive materials [1] and activities that involve use of the materials.

In a letter dated November 9, 2006, Governor Rendell certified that the Commonwealth of Pennsylvania has a program for the control of radiation hazards that is adequate to protect public health and safety within Pennsylvania for the materials and activities specified in the proposed Agreement, and that the Commonwealth desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The radioactive materials and activities (which together are usually referred to as the ''categories of materials'') that the Commonwealth of Pennsylvania requests authority over are:

(1) The possession and use of byproduct materials as defined in Section 11e.(1) of the Act;

(2) The possession and use of byproduct materials as defined in Section 11e.(3) of the Act;

(3) The possession and use of byproduct materials as defined in Section 11e.(4) of the Act;

(4) The possession and use of source materials;

(5) The possession and use of special nuclear materials in quantities not sufficient to form a critical mass; and

(6) The regulation of the land disposal of: byproduct materials as defined in Section 11e.(1), 11e.(3), or 11e.(4) of the Act; source; or special nuclear waste materials received from other persons.

(b) The proposed Agreement contains articles that:

- Specify the materials and activities over which authority is transferred;
- Specify the activities over which the Commission will retain regulatory authority;
- Continue the authority of the Commission to safeguard nuclear materials and restricted data;
- Commit the Commonwealth of Pennsylvania and NRC to exchange information as necessary to maintain coordinated and compatible programs;
- Provide for the reciprocal recognition of licenses;
- Provide for the suspension or termination of the Agreement; and
- Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission, and signed by the NRC Chairman and the Governor of Pennsylvania.

(c) The regulatory program is authorized by law under the Radiation Protection Act (35 P.S. 7110.101–7110.703). Section 7110.201 provides the authority for the Governor to enter into an Agreement with the Commission. Pennsylvania law contains provisions for the orderly transfer of regulatory authority over affected licensees from the NRC to the Commonwealth. After the effective date of the Agreement, licenses issued by NRC would continue in effect as Pennsylvania licenses until the licenses expire or are replaced by State-issued licenses. NRC licenses transferred to Pennsylvania which contain requirements for decommissioning and express an intent to terminate the license when decommissioning has been completed under a Commission-approved decommissioning plan will continue as Pennsylvania licenses and will be terminated by Pennsylvania when the Commission-approved

[1] The radioactive materials, sometimes referred to as ''Agreement materials,'' are: (a) Byproduct materials as defined in Section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(3) of the Act; (c) byproduct materials as defined in Section 11e.(4) of the Act; (d) source materials as defined in Section 11z. of the Act; and (e) special nuclear materials as defined in Section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

decommissioning plan has been completed.

Pennsylvania currently regulates the users of naturally-occurring and accelerator-produced radioactive materials. The Energy Policy Act of 2005 (EPAct) expanded the Commission's regulatory authority over byproduct materials as defined in Sections 11e.(3) and 11e.(4) of the Act, to include certain naturally-occurring and accelerator-produced radioactive materials. On August 31, 2005, the Commission issued a time-limited waiver (70 FR 51581) of the EPAct requirements. Under the proposed Agreement, Pennsylvania would assume regulatory authority for these radioactive materials. Therefore, if the proposed Agreement is approved, the Commission would terminate the time-limited waiver in Pennsylvania coincident with the effective date of the Agreement. Also, a notification of waiver termination would be provided in the **Federal Register** for the final Agreement.

(d) The NRC draft staff assessment finds that the Commonwealth of Pennsylvania Bureau of Radiation Protection of the Pennsylvania Department of Environmental Protection is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of Agreement materials.

II. Summary of the NRC Staff Assessment of the Pennsylvania Program for the Control of Agreement Materials

The NRC staff has examined the Pennsylvania request for an Agreement with respect to the ability of the radiation control program to regulate Agreement materials. The examination was based on the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' (46 FR 7540; January 23, 1981, as amended by policy statements published at 46 FR 36969; July 16, 1981 and at 48 FR 33376; July 21, 1983), and the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA–700, ''Processing an Agreement.''

(a) *Organization and Personnel.* The Agreement materials program will be located within the existing Bureau of Radiation Protection (BRP) of the Pennsylvania Department of Environmental Protection (PADEP). The Bureau will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the BRP staff members are specified in the Commonwealth of Pennsylvania personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Several staff members hold advanced degrees, and all have had additional training plus working experience in radiation protection. Supervisory level staff each have at least seven years working experience in radiation protection.

The BRP performed and the NRC staff reviewed an analysis of the expected workload under the proposed Agreement. Based on the NRC staff review of the BRP's staff analysis, the BRP has an adequate number of staff to regulate radioactive materials under the terms of the Agreement. The BRP will employ a staff with at least the equivalent of 17.2 full-time professional/technical and administrative employees for the Agreement materials program.

Pennsylvania has indicated that the BRP has an adequate number of trained and qualified staff in place. Pennsylvania has developed qualification procedures for license reviewers and inspectors which are similar to the NRC's procedures. The technical staff are working with NRC license reviewers in the NRC Region I Office and accompanying NRC staff on inspections of NRC licensees in Pennsylvania. Pennsylvania is also actively further supplementing their experience through direct meetings, discussions, and facility walk-downs with NRC licensees in Pennsylvania, and through self-study, in-house training, and formal training.

In the course of the NRC staff's continued interactions with Pennsylvania, the NRC staff will confirm the assurances that Pennsylvania provided concerning having an adequate number of trained and qualified staff in place, based on Pennsylvania's staff needs analysis and qualification procedures. Specifically, the NRC staff will verify how BRP staff fit into the qualification process, which staff are qualified in certain areas, and the basis for the determinations.

(b) *Legislation and Regulations.* In conjunction with the rulemaking authority vested in the Environmental Quality Board by Section 302 of the Pennsylvania Radiation Protection Act 1984–147, PADEP has the requisite authority to promulgate regulations for protection against radiation. The law provides PADEP the authority to issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors.

The NRC staff verified that Pennsylvania adopted the relevant NRC regulations in 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 70, 71, and 150 into Pennsylvania Code Title 25, Environmental Protection by reference. The NRC staff also verified that Pennsylvania adopted the relevant NRC regulations in 10 CFR Part 61 into Pennsylvania Code Title 25, Environmental Protection. The NRC staff also approved an order to implement Increased Controls requirements for risk-significant radioactive materials for certain Pennsylvania licensees under the proposed Agreement. As a result of the renumbering of 10 CFR Part 71 in 2004, Pennsylvania is proceeding with necessary revisions to their regulations to ensure compatibility, that will be effective by October 1, 2007. Therefore, on the proposed effective date of the Agreement, Pennsylvania will have adopted an adequate and compatible set of radiation protection regulations which apply to byproduct, source, and special nuclear materials in quantities not sufficient to form a critical mass. The NRC staff also verified that Pennsylvania will not attempt to enforce regulatory matters reserved to the Commission.

(c) *Storage and Disposal.* Pennsylvania has also adopted by reference the NRC requirements for the storage of radioactive material and for the land disposal of radioactive material as waste. The waste disposal requirements cover both the disposal of waste generated by the licensee and the disposal of waste generated by and received from other persons.

(d) *Transportation of Radioactive Material.* Pennsylvania has adopted the NRC regulations in 10 CFR Part 71 by reference. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials. Pennsylvania will not attempt to enforce portions of the regulations related to activities, such as approving packaging designs, which are reserved to NRC.

(e) *Recordkeeping and Incident Reporting.* Pennsylvania has adopted by reference the Sections of the NRC regulations which specify requirements

for licensees to keep records, and to report incidents or accidents involving materials.

(f) *Evaluation of License Applications.* Pennsylvania has adopted by reference the NRC regulations that specify the requirements a person must meet to get a license to possess or use radioactive materials. Pennsylvania has also developed a licensing procedures manual, along with the accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) *Inspections and Enforcement.* Pennsylvania has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by the NRC. The program has adopted procedures for the conduct of inspections, reporting of inspection findings, and reporting inspection results to the licensees. Pennsylvania has also adopted procedures for the enforcement of regulatory requirements, and is authorized by law to enforce the State rules using a variety of sanctions, including the imposition and collection of civil penalties, and the issuance of orders to suspend, modify or revoke licenses, or to impound materials.

(h) *Regulatory Administration.* Pennsylvania is bound by requirements specified in Commonwealth law for rulemaking, issuing licenses, and taking enforcement actions. The program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Pennsylvania law prescribes standards of ethical conduct for Commonwealth employees.

(i) *Cooperation with Other Agencies.* Pennsylvania law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Pennsylvania. The law provides that these former NRC licenses will expire either 90 days after receipt from the radiation control program of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is later. In the case of NRC licenses that are terminated under restricted conditions required by 10 CFR 20.1403 prior to the effective date of the proposed Agreement, Pennsylvania deems the termination to be final despite any other provisions of Commonwealth law or rule. For NRC licenses that, on the effective date of the proposed Agreement, contain a license condition indicating intent to terminate the license upon completion of a Commission approved decommissioning plan, the transferred license will be terminated by Pennsylvania under the plan so long as the licensee conforms to the approved plan.

Pennsylvania also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. The Pennsylvania Code provides exemptions from the Commonwealth's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors. The proposed Agreement commits Pennsylvania to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation, and to assure that Pennsylvania's program will continue to be compatible with the Commission's program for the regulation of Agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and Pennsylvania to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Section 274d of the Act provides that the Commission shall enter into an agreement under Section 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Section 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The NRC staff has reviewed the proposed Agreement, the certification by the Commonwealth of Pennsylvania in the application for an Agreement submitted by Governor Rendell on November 9, 2006, and the supporting information provided by the staff of the Bureau of Radiation Protection of the Pennsylvania Department of Environmental Protection, and concludes that, except as discussed above in Section II. ''Summary of the NRC Staff Assessment of the Pennsylvania Program for the Control of Agreement Materials,'' (a) ''Organization and Personnel,'' of this document, the Commonwealth of Pennsylvania satisfies the criteria in the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' and therefore, meets the requirements of Section 274 of the Act. The proposed Pennsylvania program to regulate Agreement materials, as comprised of statutes, regulations, and procedures, is compatible with the program of the Commission and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

With respect to discussion above in Section II. ''Summary of the NRC Staff Assessment of the Pennsylvania Program for the Control of Agreement Materials,'' (a) ''Organization and Personnel,'' once the NRC staff confirms the assurances provided by Pennsylvania concerning staff training and qualifications, the staff will be able to conclude that area is satisfied.

Dated at Rockville, Maryland, this 11th day of June, 2007.

For the Nuclear Regulatory Commission.

Scott W. Moore,

Deputy Director Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs.

Appendix A— An Agreement Between the United States Nuclear Regulatory Commission and the Commonwealth of Pennsylvania for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the Commonwealth Pursuant to Section 274 of the Atomic Energy Act of 1954, As Amended

Whereas, The United States Nuclear Regulatory Commission (the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011 *et seq.* (the Act), to enter into agreements with the Governor of any State/Commonwealth providing for discontinuance of the regulatory authority of the Commission within the Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1), (3), and (4) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the Commonwealth of Pennsylvania is authorized under the Pennsylvania Radiation Protection Act, Act of July 10, 1984, P.L. 688, No. 147, as amended, 35 P.S. § 7110.101 *et seq.*, to enter into this Agreement with the Commission; and,

Whereas, The Governor of the Commonwealth of Pennsylvania certified on November 8, 2006, that the Commonwealth of Pennsylvania (the Commonwealth) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the Commonwealth covered by this Agreement, and that the Commonwealth desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on [date] that the program of the Commonwealth for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The Commonwealth and the Commission recognize the desirability and importance of cooperation between the Commission and the Commonwealth in the formulation of standards for protection against hazards of radiation and in assuring that Commonwealth and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the Commonwealth recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Act;

Now, therefore, It is hereby agreed between the Commission and the Governor of the Commonwealth acting on behalf of the Commonwealth as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

1. Byproduct materials as defined in Section 11e.(1) of the Act;
2. Byproduct materials as defined in Section 11e.(3) of the Act;
3. Byproduct materials as defined in Section 11e.(4) of the Act;
4. Source materials;
5. Special nuclear materials in quantities not sufficient to form a critical mass.
6. The regulation of the land disposal of all byproduct, source, and special nuclear waste materials covered by this Agreement;

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear materials waste as defined in the regulations or orders of the Commission;
4. The regulation of the disposal of such other byproduct, source, or special nuclear materials waste as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be disposed without a license from the Commission;
5. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.

Article III

With the exception of those activities identified in Article II.A.1 through 4, this Agreement may be amended, upon application by the Commonwealth and approval by the Commission, to include one or more of the additional activities specified in Article II, whereby the Commonwealth may then exert regulatory authority and responsibility with respect to those activities.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under SubSection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will cooperate with the Commonwealth and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and Commonwealth programs for protection against hazards of radiation will be coordinated and compatible. The Commonwealth agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that the Commonwealth's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The Commonwealth and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The Commonwealth and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VII

The Commission and the Commonwealth agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the Commonwealth agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the Commonwealth, or upon request of the Governor of the Commonwealth, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the Commonwealth has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the Commonwealth has failed to take necessary steps. The Commission shall periodically review actions taken by the Commonwealth under this Agreement to ensure compliance with Section 274 of the Act which requires a Commonwealth program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

Article IX

This Agreement shall become effective on [date], and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at [City, State] this [date] day of [month], [year].

For the United States Nuclear Regulatory Commission.

Dale E. Klein,
Chairman.

For the Commonwealth of Pennsylvania.

Edward G. Rendell,
Governor.

[FR Doc. E7–11697 Filed 6–15–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To be published].

STATUS: Open Meetings.

PLACE: 100 F Street, NE., L–002, Auditorium, Washington, DC.

ANNOUNCEMENT OF ADDITIONAL MEETINGS: Open Meetings.

The Commission has scheduled Open Meetings on Tuesday, June 19, 2007 at 9 a.m. and Wednesday, June 20, 2007 at 10 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting on Tuesday, June 19, 2007 will be:

The Commission will hold a roundtable discussion regarding rule 12b–1 under the Investment Company of 1940. The discussion will address: (i) The historical circumstances that led to the adoption of rule 12b–1, and the original intended purpose of the rule; (ii) the rule's current role in fund distribution practices; (iii) the costs and benefits of the current use of rule 12b–1; and (iv) the options for reform or rescission of rule 12b–1.

The subject matter of the Open Meeting on Wednesday, June 20, 2007 will be:

1. The Commission will consider whether to adopt amendments to expand its interactive data voluntary reporting program to permit mutual funds to submit as exhibits to their registration statements supplemental tagged information contained in the risk/return summary section of their prospectuses. The risk/return summary section contains key mutual fund information, including investment objectives and strategies, risks, and costs.

2. The Commission will consider whether to propose amendments to Form 20–F, Rules 3–10 and 4–01 of Regulation S–X, Forms F–4 and S–4, and Rule 701 under the Securities Act, to accept financial statements prepared in accordance with International Financial Reporting Standards as published by the International Accounting Standards Board without reconciliation to generally accepted accounting principles as used in the United States when contained in the filings of foreign private issuers with the Commission.

3. The Commission will consider whether to adopt amendments to the proxy rules under the Exchange Act to provide shareholders with the ability to choose the means by which they access proxy materials. Under the amendments, issuers and other soliciting persons will post their proxy materials on an Internet Web site and provide shareholders with a notice of the Internet availability of the materials. The issuer or soliciting person may choose to furnish paper copies of the proxy materials along with the notice. If the issuer or soliciting person chooses not to furnish a paper copy of the proxy materials along with the notice, a shareholder may request delivery of a copy at no charge to the shareholder.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: June 13, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–11666 Filed 6–15–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 72 FR 32150, June 11, 2007.

STATUS: Open meeting.

PLACE: 100 F Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, June 13, 2007 at 10 a.m.

CHANGE IN THE MEETING: Deletion of an Item

The following item was not considered during the Open Meeting on Wednesday, June 13, 2007:

1. The Commission will consider whether to adopt amendments to Rule 105 of Regulation M that would further safeguard the integrity of the capital raising process and protect issuers from manipulative activity that can reduce issuers' offering proceeds and dilute security holder value.

The Commission determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: June 13, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–11713 Filed 6–15–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55897; File No. SR–ISE–2007–41]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Non-ISE Market Maker Fees

June 12, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') submitted to 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 ISE. ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders it 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 ISE is proposing to amend its Schedule of Fees to increase the fee for non-ISE market maker orders (''FARMM orders'') from $0.19 per contract to $0.40 per contract.

The text of the proposed rule change is available on ISE's Web site at *http://www.iseoptions.com/legal/proposed_rule_changes.asp,* at the principal office of ISE, 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, ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISE has prepared summaries, set forth in Sections A, B,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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 increase the execution fee for FARMM orders. FARMM orders are orders that are sent to the Exchange for execution by an Electronic Access Member (''EAM''), an ISE member, on behalf of a non-ISE market maker. The Exchange currently charges FARMM orders $0.19 per contract comprised of an execution fee and a comparison fee of $0.16 and $0.03 per contract, respectively.[5] FARMM orders do not include Linkage Orders. The Exchange proposes to increase the fee for all FARMM orders to $0.40 per contract, comprised of an execution fee and a comparison fee of $0.37 and $0.03 per contract, respectively. The Exchange believes that the proposed increase to the execution fee will still leave ISE as one of the least expensive venues for executing FARMM orders through an electronic trading system.[6]

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) of the Act[7] that an exchange have an equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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[8] and Rule 19b–4(f)(2) thereunder,[9] because it establishes or changes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2007–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–41. 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–2007–41 and should be submitted on or before July 9, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E7–11657 Filed 6–15–07; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Securities Exchange Act Release No. 53630 (April 11, 2006), 71 FR 19918 (April 18, 2006) (SR–ISE–2006–18).

[6] The Exchange notes that the American Stock Exchange imposes a ''Non-Member Market Maker'' fee of $.50 per contract side for Auto-Ex FARMM orders, and the Philadelphia Stock Exchange imposes a ''Broker/Dealer'' fee of $.45 per contract for AUTOM-delivered FARMM orders. Telephone conversation between Samir Patel, Assistant General Counsel, ISE, Richard Holley, Senior Special Counsel, Division of Market Regulation, Commission, and Rahman Harrison, Special Counsel, Division of Market Regulation, Commission on June 7, 2007.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55894; File No. SR–CBOE–2007–57]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt an Interpretation to CBOE Rule 8.95

June 11, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the CBOE. The Exchange has designated this proposal as one constituting a stated interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

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

CBOE proposes to adopt an interpretation to CBOE Rule 8.95 clarifying that in the event an existing Designated Primary Market-Maker (''DPM'') organization is authorized to act as an Off-Floor DPM in one or more option classes, such authorization will be considered a reallocation of securities pursuant to CBOE Rule 8.95. The text of the proposed rule change is available on CBOE's Web site (*http://www.cboe.com/Legal*), at the CBOE'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 CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt an interpretation to CBOE Rule 8.95 clarifying that in the event an existing DPM organization is authorized to act as an Off-Floor DPM in one or more option classes, such authorization will be considered a reallocation of securities pursuant to CBOE Rule 8.95. In adopting this interpretation, the appropriate Exchange committee will retain jurisdiction for the first 12 months following the reallocation of securities to review the Off-Floor DPM's market performance commitments that were made in connection with the appropriate Exchange committee's authorization to permit the DPM organization to act as an Off-Floor DPM.

Pursuant to CBOE Rule 8.83(g), an On-Floor DPM may request that the appropriate Exchange committee authorize it to operate as an Off-Floor DPM in one or more equity option classes traded on the Hybrid Trading System.[5] If an On-Floor DPM is approved to act as an Off-Floor DPM, CBOE proposes to adopt an interpretation to CBOE Rule 8.95 clarifying that the option classes in which the On-Floor DPM is authorized to act as an Off-Floor DPM are considered a reallocation of securities.

Consistent with the way CBOE Rule 8.95(c) is currently applied to allocations and reallocations of securities, the appropriate Exchange committee will then have the flexibility during the first 12 months following the reallocation of securities to the Off-Floor DPM to conduct a review at any time during that first 12 months to ensure that the Off-Floor DPM is adhering to any market performance commitments made by the DPM organization in connection with being authorized to act as an Off-Floor DPM. If the Off-Floor DPM is not adhering to the market performance commitments that it made in connection with being authorized to act as an Off-Floor DPM, then the appropriate Exchange committee may remove the allocated security from the Off-Floor DPM and reallocate the security pursuant to CBOE Rule 8.95(c). This in turn gives Off-Floor DPMs incentive to abide by these commitments.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or receive d by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[8] and Rule 19b–4(f)(1) thereunder,[9] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2007–57 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–57. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[5] *See* Securities Exchange Act Release No. 34–55531 (March 26, 2007) 72 FR 15736 (April 2, 2007) (Order approving SR–CBOE–2006–94).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(i).

[9] 17 CFR 240.19b–4(f)(1).

[10] *See* 15 U.S.C. 78s(b)(3)(C).

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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–57 and should be submitted on or before July 9, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E7–11628 Filed 6–15–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55895; File No. SR–ISE–2007–38]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Payment for Order Flow Fees

June 11, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2007, the International Securities Exchange, LLC (''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. ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by ISE under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change 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 reduce the payment for order flow (''PFOF'') fees for options on issues that trade as part of the Penny Pilot (''Pilot'').[5] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.iseoptions.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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. ISE has substantially prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 26, 2007, ISE and all of the other options exchanges commenced the Pilot for the quoting and trading of specified options contracts in $.01 increments. The Exchange currently operates a PFOF program as approved by the Commission.[6] This program is funded through a fee, currently set at $0.65 per contract, paid by Exchange market makers for each customer contract they execute. All funds collected by the Exchange are administered by specified market makers.[7] PFOF fees collected by the Exchange that are not distributed are rebated back to the market makers. Subsequent to the commencement of the Pilot, the Exchange amended its Schedule of Fees by reducing the PFOF fees for issues that trade as part of the Pilot from $0.65 per contract to $0.25 per contract (''Pilot PFOF Fees'').[8]

The Exchange now proposes to reduce the Pilot PFOF Fees from $0.25 per contract to $0.10 per contract for transactions in all Pilot issues. This fee reduction shall also apply to other issues that become a part of the Pilot in the event the Pilot is expanded beyond the current 13 securities. The Exchange notes that quoting and trading in one cent increments pursuant to the Pilot has resulted in narrower spreads in the 13 Pilot securities. PFOF, as a result, has become less of a competitive factor in the Pilot securities. The Exchange thus believes that while it is prudent for it to maintain its PFOF fee, $0.10 per contract is an appropriate PFOF rate relative to the trading increments in these instruments.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] in particular, because it is an equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities. In particular, the Exchange believes that lowering PFOF fees further in Pilot issues would enhance competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 54603 (October 16, 2006), 71 FR 62024 (October 20, 2006) (SR–ISE–2006–62) (Notice of Filing of Proposed Rule Change to Implement a Pilot Program To Quote and To Trade Options in Pennies).

[6] *See* Securities Exchange Act Release No. 43833 (January 10, 2001), 66 FR 7822 (January 25, 2001) (SR–ISE–2000–10).

[7] Initially only Primary Market Makers administered PFOF pools. However, the Exchange recently amended its PFOF program to allow a preferenced Competitive Market Maker (''CMM'') to administer the PFOF funds collected by the Exchange with respect to orders in a group of options classes preferenced to that CMM. *See* Securities Exchange Act Release No. 53127 (January 13, 2006), 71 FR 3582 (January 23, 2006) (SR–ISE–2005–57).

[8] *See* Exchange Act Release No. 55271 (February 12, 2007), 72 FR 7699 (February 16, 2007) (SR–ISE–2007–08) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Payment for Order Flow Fees).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

Act[11] and Rule 19b–4(f)(2)[12] thereunder, 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 such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2007–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–38. 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 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–2007–38 and should be submitted on or before July 9, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E7–11625 Filed 6–15–07; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55892; File No. SR–NASDAQ–2007–043]

Self-Regulatory Organizations; NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto To Remove Provisions Governing the Operation of the ACES Service

June 11, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 25, 2007, the NASDAQ Stock Market LLC (''Nasdaq'' 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 proposed rule change on May 29, 2007, and June 5, 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

Nasdaq proposes to remove from its rules provisions governing the operations of the ACES communications service. Nasdaq's rule book contains rules pertaining to ''facilities'' of the exchange, and ACES is not such a ''facility'' within the meaning of the Act.

Specifically, Nasdaq proposes to delete: (a) The entire Rule 6200 Series (titled ACES), consisting of Rules 6210, 6220, 6230, 6240 and 6250; and (b) the entire Rule 7026 (titled ACES). The Rule book will show the Rule 6200 Series and Rule 7026 as ''Reserved.''

The text of the proposed rule change is available at Nasdaq, at the Commission's Public Reference Room, and at *http://www.nasdaq.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ 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

ACES is a neutral communications service that allows market participants to route orders to one another. ACES does not effect trade executions, and it does not report executed trades to ''the tape.'' Moreover, market participants receiving orders through ACES may execute them in any manner that they deem consistent with duties of best execution and other applicable industry obligations. As the ACES service can be of value to all market participants, both members and non-members of Nasdaq are permitted to use it.

Sections 6(b)[3] and 19(b)(1)[4] of the Act and Rule 19b–4 thereunder[5] require a national securities exchange to file its rules with the Commission. Section 3(a)(27) of the Act[6] and Rule 19b–4 define the ''rules'' of an exchange with reference to its ''facilities'': a rule includes ''any material aspect of the operation of the facilities'' of the exchange or any statement with respect to ''the rights, obligations or privileges'' of exchange members or persons having or seeking access to the facilities of the exchange.[7] Finally, Section 3(a)(2) of the Act defines ''facility,'' when used with respect to an exchange, to include:

its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any services thereof *for the purpose of effecting*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] 15 U.S.C. 78c(a)(27).

[7] 17 CFR 240.19b–4.

or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.[8]

As explained above, ACES does not effect trade executions, and it does not report executed trades to ''the tape.'' Rather, it merely allows market participants to route orders to one another for execution in any manner that in the participants' judgment is consistent with their applicable obligations. As such, the Exchange believes that ACES does not constitute a facility of a national securities exchange within the meaning of the Act, and therefore Nasdaq is not required to file rules regarding its operation.

In the past, when Nasdaq's parent entity, The Nasdaq Stock Market, Inc., was a subsidiary of the National Association of Securities Dealers, Inc. (''NASD''), ACES rules were not included in the NASD Manual, based on an understanding that Commission staff did not consider ACES to be a facility of the NASD. During the process of registering Nasdaq as a national securities exchange, however, Commission staff requested that Nasdaq develop and file rules for ACES to allow Commission staff to enhance its understanding of ACES's operation. Subsequently, Nasdaq has concluded that these rules are not required to be maintained, and therefore Nasdaq is proposing their deletion. If, at a later date, Nasdaq proposes to modify the operations of ACES in a manner that would cause it to fit within the definition of a facility of the exchange, or if Nasdaq proposes to tie ACES fees to fees for or usage of exchange services, Nasdaq would file a proposed rule change with the Commission.

2. Statutory Basis

As explained above, Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act[9] in that the provisions to be removed from the Nasdaq rules are outside the scope of this Section.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[8] 15 U.S.C. 78c(a)(2) (emphasis added).

[9] 15 U.S.C. 78f(b).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. 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*. Please include File Number SR–NASDAQ–2007–043 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–NASDAQ–2007–043. 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 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–NASDAQ–2007–043 and should be submitted on or before July 9, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E7–11626 Filed 6–15–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55893; File No. SR–NSX–2007–05]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Modify Chapter VII of the Exchange's Rules Regarding Suspensions of an ETP Holder by Certain Exchange Officers

June 11, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 9, 2007, National Stock Exchange, Inc. (''NSX'' or the ''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 Exchange is proposing to modify Chapter VII of the Exchange's rules to provide that the Chairman of the Exchange's Board of Directors (''Chairman'') or the Exchange's Chief

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Regulatory Officer, or their respective designees, would have the authority to summarily suspend or place limitations or conditions on an ETP Holder, or summarily suspend a person from access to Exchange services in certain circumstances. That authority currently rests with the Chairman or the Exchange's President. The text of the proposed rule change is below. Proposed new language is *in italics;* proposed deletions are enclosed in brackets.

RULES OF NATIONAL STOCK EXCHANGE, INC.

* * * * *

CHAPTER VII

Suspension by Chairman [or President] *or Chief Regulatory Officer*

Rule 7.1. Imposition of Suspension

(a) An ETP Holder which fails or is unable to perform any of its contracts, or is insolvent or is unable to meet the financial responsibility requirements of the Exchange, shall immediately inform the Secretary in writing of such fact. Upon receipt of said notice, or whenever it shall appear to the Chairman *of the Board* or [President] *Chief Regulatory Officer, or their respective designees,* (after such verification and with such opportunity for comment by the ETP Holder as the circumstances reasonably permit) that an ETP Holder has failed to perform its contracts or is insolvent or is in such financial or operational condition or is otherwise conducting its business in such financial or operational condition or is otherwise conducting its business in such a manner that it cannot be permitted to continue in business with safety to its customers, creditors and other ETP Holders of the Exchange, the Chairman or [President] *Chief Regulatory Officer, or their respective designees,* may summarily suspend the ETP Holder or may impose such conditions and restrictions upon the ETP Holder as are reasonably necessary for the protection of investors, the Exchange, the creditors and the customers of such ETP Holder.

(b) No Change.

(c) In the event of suspension of an ETP Holder, the Exchange shall give prompt notice of such suspension to the ETP Holders of the Exchange. Unless the Chairman or the *Chief Regulatory Officer, or their respective designees,* [President] shall determine that lifting the suspension without further proceedings is appropriate, such suspension shall continue until the ETP Holder is reinstated as provided in Rule 7.3. of this Chapter.

Rules 7.2.–7.5. No Change.

Rule 7.6. Summary Suspension of Exchange Services

The Chairman [or President] *of the Board or Chief Regulatory Officer, or their respective designees,* (after such verification with such opportunity for comment as the circumstances reasonably permit) may summarily limit or prohibit: (i) Any person from access to services offered by the Exchange, if such person has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with an ETP Holder of any self-regulatory organization or is in such financial or operating difficulty that the Exchange determines that such person cannot be permitted to do business with safety to investors, creditors, Exchange ETP Holders or the Exchange; or (ii) a person who is not an ETP Holder from access to services offered by the Exchange, if such person does not meet the qualification requirements or other pre-requisites for such access and if such person cannot be permitted to continue to have access with safety to investors, creditors, ETP Holders and the Exchange. Any person aggrieved by any such summary action may seek review under the provisions of the Exchange Rules relating to adverse action.

Rule 7.7. No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to modify Chapter VII of the Exchange's rules regarding suspensions of an ETP Holder by certain Exchange officers. Specifically, the proposal provides that the Chairman or the Chief Regulatory Officer, or their respective designees, would now have the authority to summarily suspend or place limitations or conditions on an ETP Holder under Rule 7.1, and lift suspensions pursuant to Rule 7.1(c) without further proceedings. The proposal also provides that the Chairman or the Chief Regulatory Officer, or their respective designees, shall also have the authority to summarily limit or suspend Exchange services to certain persons under Rule 7.6. In both cases, that authority currently rests with the Chairman or the President.

The proposal also provides that in the event either the Chairman or the Chief Regulatory Officer is not available, a person may be designated to act in their place for purposes of Chapter VII. The designee for the Chairman would be the Chairman of the Exchange's Regulatory Oversight Committee (''ROC''), a member of the ROC, or another comparable member of the Exchange's Board of Directors who is an Independent Director,[3] in that order of priority. The designee for the Chief Regulatory Officer would be an officer in the Regulatory Services Division of the Exchange. This provision would provide continuity in the event the Chairman or the Chief Regulatory Officer is unavailable.

This rule change proposal would impact who has authority to act under Chapter VII but in no way changes the substantive provisions of this Chapter VII.

2. Statutory Basis

The proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b)[4] of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5)[5] of the Act that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, 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 inappropriate burden on

[3] Section 1.1. I of the NSX By-Laws defines Independent Director as a member of the Board that the Board has determined to have no material relationship with the Exchange or any affiliate of the Exchange, or any ETP Holder or any affiliate of any such ETP Holder, other than as a member of the Board.

[4] 15 U.S.C. § 78f(b).

[5] 15 U.S.C. § 78f(b)(5).

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 such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSX–2007–05 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–NSX–2007–05. This file number should be included in 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 NSX. 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 the File Number SR–NSX–2007–05 and should be submitted on or before July 9, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Nancy M. Morris,

Secretary.

[FR Doc. E7–11627 Filed 6–15–07; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10883 and #10884]

Iowa Disaster Number IA–00008

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1705–DR), dated 05/25/2007.

Incident: Severe Storms, Flooding and Tornadoes.

Incident Period: 05/05/2007 through 05/07/2007.

EFFECTIVE DATE: 06/08/2007.

Physical Loan Application Deadline Date: 07/24/2007.

EIDL Loan Application Deadline Date: 02/25/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Iowa, dated 05/25/2007, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Dallas.

Contiguous Counties:

Iowa: Boone, Greene, Polk, Warren.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Jane M. Pease,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E7–11683 Filed 6–15–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10866 and #10867]

Kansas Disaster Number KS–00018

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1699–DR), dated 05/06/2007.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 05/04/2007 through 05/18/2007.

Effective Date: 06/11/2007.

Physical Loan Application Deadline Date: 07/05/2007.

EIDL Loan Application Deadline Date: 02/06/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Kansas, dated 05/06/2007 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Ellsworth, Dickinson.

All other counties contiguous to the above named primary counties have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Jane M. Pease,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E7–11702 Filed 6–15–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10895 and #10896]

Missouri Disaster #MO–00011

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1708–DR), dated 06/11/2007.

Incident: Severe Storms and Flooding.

Incident Period: 05/05/2007 through 05/18/2007.

Effective Date: 06/11/2007.

Physical Loan Application Deadline Date: 08/10/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 03/11/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/11/2007, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Andrew, Atchison, Buchanan, Carroll, Chariton, Clay, Daviess, Dekalb, Gentry, Holt, Jackson, Lafayette, Livingston, Morgan, Nodaway, Osage, Platte.

Contiguous Counties (Economic Injury Loans Only):

Missouri: Benton, Caldwell, Callaway, Camden, Cass, Clinton, Cole, Cooper, Gasconade, Grundy, Harrison, Howard, Johnson, Linn, Macon, Maries, Miller, Moniteau, Montgomery, Pettis, Randolph, Ray, Saline, Worth.

Iowa: Fremont, Page, Taylor.

Kansas: Atchison, Doniphan, Johnson, Leavenworth, Wyandotte.

Nebraska: Nemaha, Otoe, Richardson.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10895B and for economic injury is 108960.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Ralph R. Finley,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E7–11704 Filed 6–15–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10893]

Nebraska Disaster #NE–00013

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA–1706–DR), dated 06/06/2007.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 05/04/2007 through 05/19/2007.

Effective Date: 06/06/2007.

Physical Loan Application Deadline Date: 08/06/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/06/2007, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Blaine, Brown, Cass, Custer, Gage, Garfield, Jefferson, Johnson, Keya Paha, Knox, Loup, Nemaha, Otoe, Pawnee, Richardson, Saline, Saunders, Wheeler.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10893.

(Catalog of Federal Domestic Assistance Number 59008)

Jane M. Pease,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E7–11705 Filed 6–15–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10894]

Oklahoma Disaster #OK–00011

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA–1707–DR), dated 06/07/2007.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 05/04/2007 through 05/11/2007.

Effective Date: 06/07/2007.

Physical Loan Application Deadline Date: 08/06/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/07/2007, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Atoka, Beckham, Blaine, Caddo, Comanche, Dewey, Ellis, Greer, Kay, Kiowa, Lincoln, Noble, Nowata, Okfuskee, Pottawatomie, Roger Mills, Seminole.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.250
Businesses And Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10894.

(Catalog of Federal Domestic Assistance Number 59008)

Jane M. Pease,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E7–11706 Filed 6–15–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10881 and #10882]

South Dakota Disaster Number SD–00012

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1702–DR), dated 05/22/2007.

Incident: Severe Storms, Tornadoes and Flooding.

Incident Period: 05/04/2007 and continuing through 06/08/2007.

EFFECTIVE DATE: 06/08/2007.

Physical Loan Application Deadline Date: 07/23/2007.

EIDL Loan Application Deadline Date: 02/22/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of South Dakota, dated 05/22/2007, is hereby amended to establish the incident period for this disaster as beginning 05/04/2007 and continuing through 06/08/2007.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Jane M. Pease,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E7–11681 Filed 6–15–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on the Interstate 81 Corridor Improvement Study in Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C. 139*(l)*(1). The actions relate to the Interstate 81 Corridor Improvement Study in Virginia. The Federal actions, taken as a result of Tier 1 of a tiered environmental review process under the National Environmental Policy Act, 42 U.S.C. 4321–4351 (NEPA), and implementing regulations on tiering, 40 CFR 1502.20, 40 CFR 1508.28, and 23 CFR 771, determined certain issues relating to the study. Those Tier 1 decisions will be used by Federal agencies in subsequent tier proceedings, including decisions on whether to grant licenses, permits, and approvals for highway projects. The Tier 1 decisions may also be relied upon by State and local agencies in subsequent proceedings.

DATES: By this notice, the FHWA is advising the public that it has made decisions that are subject to 23 U.S.C. 139*(l)*(1) and are final with respect to Tier 1 within the meaning of that law. A claim seeking judicial review of the Tier 1 Federal agency decisions on the Interstate 81 Corridor Improvement Study will be barred unless the claim is filed on or before December 17, 2007. If the Federal law that authorizes judicial review of a claim provides a time period of less that 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. John Simkins, I–81 Corridor Environmental Project Manager, Federal Highway Administration, 400 North 8th Street, Suite 750, Richmond, Virginia 23219–4825; telephone: (804) 775–3342; e-mail: *John.Simkins@dot.gov*. The FHWA Virginia Division Office's normal business hours are 7 a.m. to 5 p.m. (eastern time). For the Virginia Department of Transportation: Mr. Chris Collins, Project Studies Manager, Virginia Department of Transportation, 1401 East Broad Street, Richmond, Virginia 23219; telephone (804) 225–4249; e-mail: *CG.Collins@VirginiaDOT.org.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has issued a Tier 1 Final Environmental Impact Statement and Tier 1 Record of Decision for the Interstate 81 Corridor Improvement Study in Virginia. Decisions in the Tier 1 Record of Decision include the following:

1. Improvement concept to be advanced;
2. Advancing I–81 as a toll pilot facility under Section 1216(b) of the Transportation Equity Act of the 21st Century (TEA–21);
3. Projects with independent utility and logical termini to be studied in Tier 2;
4. Types of Tier 2 NEPA document(s);
5. Location of the corridor for studying alignments in Tier 2; and
6. Possible purchase of certain right-of-way parcels on a case-by-case basis.

Interested parties may consult the Tier 1 Record of Decision and Tier 1 Final Environmental Impact Statement for further information on each of the decisions described above.

The Tier 1 actions by FHWA, and the law under which such actions were taken, are described in the Tier 1 Final Environmental Impact Statement approved March 21, 2007, the Tier 1 Record of Decision issued June 6, 2007, and in other documents in the FHWA project records. The Tier 1 Final Environmental Impact Statement, the Tier 1 Record of Decision, and other documents in the FHWA project records are available by contacting the FHWA or the Virginia Department of Transportation at the address provided above. The Tier 1 Final Environmental Impact Statement and Tier 1 Record of

Decision are also available online at *http://www.I-81.org.*

This notice applies to all FHWA Tier 1 decisions that are final within the meaning of 23 U.S.C. 139*(l)*(1) as of the issuance date of this notice and all laws under which such actions were taken, including:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351].

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139*(l)*(1).

Issued On: June 12, 2007.

John Simkins,

I–81 Corridor Environmental Project Manager.

[FR Doc. 07–2984 Filed 6–15–07; 8:45 am]

BILLING CODE 4940–RY–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Amendment No. 5 to Released Rates Decision No. MC–999]

Released Rates of Motor Common Carriers of Household Goods

AGENCY: Surface Transportation Board, DOT.

ACTION: Request for comments on proposed changes to the authorization for motor common carriers of household goods to offer ''released rates,'' under which the carriers limit their liability to consumers for loss of or damage to the household goods transported.

SUMMARY: The Board proposes, and seeks comment on, three changes to its released rates authorization, to enhance the protection of consumers whose household goods are damaged or lost by motor common carriers.

DATES: Comments are due July 30, 2007. Reply comments (if any) are due August 13, 2007.

ADDRESSES: Send an original and 10 copies of any comments, referring to Amendment No. 5 to Released Rates Decision No. MC–999, to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Herzig, (202) 245–0282. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339].

SUPPLEMENTARY INFORMATION: Prior to the enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Pub. L. 109–59, 119 Stat. 1144 (2005), motor carriers of household goods (HHG) were generally held liable, under 49 U.S.C. 14706, for the actual loss or injury they caused to the property they transported. Because most HHG are ''used,'' the carrier's liability was for the depreciated value of the goods. However, under 49 U.S.C. 14706(f), HHG carriers could, with the permission of the Board, limit their liability by offering ''released rates,'' under which a carrier's liability is limited to a value established by written declaration of the shipper or by written agreement. The Board has authorized HHG carriers to offer released rates under certain terms and procedures.

The Board's current released rates orders—*Released Rates of Motor Common Carriers of Household Goods,* 5 S.T.B. 1147 (2001), and *Released Rates of Motor Common Carriers of Household Goods,* Amendment No. 4 to Released Rates Decision No. MC–999 (STB served Apr. 22, 2002, and July 26, 2006)—authorize HHG carriers to limit their liability for damage to, or loss of, the goods in their care upon a written declaration of the shipper. Under these orders, HHG carriers could avoid the default cargo liability level by offering their shippers a choice of two alternative carrier-liability options based on the rate that the shipper agreed to pay for the transportation of its goods. Under one option, the carrier's cargo liability is limited to 60 cents per pound per article (''60-cents option'') if the shipper writes a valuation of ''60 cents per pound'' on the bill of lading/contract. In that event, the shipper pays only a base rate for the shipment. Alternatively, for an additional charge, the shipper may obtain ''full value protection'' for the shipped goods (the ''FVP option''), meaning that the carrier is liable for the replacement value of the lost or damaged goods (up to the pre-declared value of the shipment), or, at the carrier's option, for restoring damaged goods to their prior condition.

In section 4207 of SAFETEA–LU, Congress changed the statutorily prescribed, standard cargo liability of HHG carrier from the actual (i.e., depreciated) value of lost or damaged goods to the replacement value of those goods unless the shipper waives in writing that level of protection *See* 49 U.S.C. 14706(f)(2), (3).[1] Thus, the standard (or default) cargo liability of a HHG carrier is now the replacement value of the goods (for example, the value of a comparable new television to replace a used television that was lost in a household move, rather than the depreciated value of the used television).

Also in SAFETEA–LU, at section 4215, Congress directed the Board to review the current Federal regulations regarding the level of cargo liability protection provided by motor carriers that transport HHG and to revise the regulations, if necessary, to provide enhanced protection in the case of loss or damage. After receiving public comments, the Board published its review in *Review of Liability of Motor Common Carriers of Household Goods,* STB Ex Parte No. 662 *(Review)* (STB served Aug. 9, 2006).

In the *Review* proceeding, the Consumer Protection Division of the Office of the Attorney General of Maryland (Consumer Protection Division) suggested ways to condition the released rates authorization to enhance consumer protection. We propose to adopt the Consumer Protection Division's two suggested changes, and ask for comment on those two proposed changes as well as a third proposed change. In addition, we invite suggestions on any other conditions that could help to ensure that consumers understand the consequences of selecting the 60-cents option when shipping their HHG.

Requiring All Shipping Documents to Include Full Value Protection. The Consumer Protection Division indicated that each year it receives complaints from consumers who did not know that they had shipped their goods under the 60-cents option until they filed claims with the moving company for property that was lost, stolen, or damaged during the move. According to the Consumer Protection Division, moving companies often include in their basic moving contract a waiver of the consumer's right to FVP, and consumers sign contracts without understanding that they are agreeing to limit the moving company's liability.

As suggested by the Consumer Protection Division, the Board proposes to require moving companies to provide, in any order for service, contract form, or bill of lading, a provision for, and a written estimate of, the cost of the move under FVP. If the moving company provides only the required estimate at FVP and the shipper accepts, the shipper will have the standard

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Written Waiver of Full Value Protection on Separate Document. We also propose, as the Consumer Protection Division suggests, to require that any waiver of FVP by the consumer must be in clear and understandable language that is designed to ensure that the waiver has been made knowingly, and must be on a document separate from the bill of lading contract. We ask for comment on: (1) The wording that would most easily explain the consequences of waiving the standard FVP; and (2) whether having the waiver on a separate document would better alert consumers to the consequences of waiving FVP.

Resetting the Assumed or Minimum Valuation for a Shipment. The current released rates orders provide for an assumed valuation and a minimum valuation for a shipment in certain circumstances. The assumed valuation arises when a shipper elects the FVP option but neglects to write a valuation figure on the bill of lading or contract. The minimum valuation comes into play when a FVP shipper writes in a value that is obviously too low.

Under the 2001 released rates order, both the assumed valuation and the minimum valuation were set at $5,000 or $4 times the actual total weight in pounds of the shipment, whichever is greater. 5 S.T.B. at 1149. Recently, the Board authorized HHG carriers to make annual inflation adjustments to the $4-per-pound figure, based on the percentage changes since a base year, by applying a commonly used index. [2] *See Released Rates of Motor Common Carriers of Household Goods*, Amendment No. 4 to Released Rates Decision No. MC–999 (STB served July 26, 2006).

At the time the Board authorized the $4-per-pound figure, a moving industry group estimated that the average actual (depreciated) value of HHG shipments was $4.50 per pound.[3] 5 S.T.B. at 1154. Thus, the approved $4-per-pound figure approximated the then-default level of carrier liability: Actual (depreciated) value. As previously explained, the default level of liability is now the replacement value of the HHG, not the depreciated value. Because the $4-per-pound figure, even as adjusted by the CPI–U, likely is nowhere near the new statutory default level of liability (*i.e.*, replacement value), it would be more appropriate to apply a new per-pound value that reasonably approximates the average replacement cost of a HHG shipment. Therefore, we solicit the public's comment on an appropriate new figure for a minimum and assumed per-pound value.[4]

[2] The index is the Consumer Price Index—All Urban Consumers (All Items), published by the Bureau of Labor Statistics of the United States Department of Labor (CPI–U).

[3] The industry group was the Household Goods Carriers' Bureau Committee, which is composed of HHG carriers.

[4] We will not eliminate the $4-per-pound minimum while we develop a new minimum valuation because the $4 level at least provides some protection for shippers who do not declare a value, or who use unscrupulous movers who might suggest unconscionably low declared values for HHG shipments.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: June 11, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E7–11659 Filed 6–15–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Amendment No. 5 to Released Rates Decision No. MC–999]

Released Rates of Motor Common Carriers of Household Goods

AGENCY: Surface Transportation Board, DOT.

ACTION: Request for comments on proposed changes to the authorization for motor common carriers of household goods to offer ''released rates,'' under which the carriers limit their liability to consumers for loss of or damage to the household goods transported.

SUMMARY: The Board proposes, and seeks comment on, three changes to its released rates authorization, to enhance the protection of consumers whose household goods are damaged or lost by motor common carriers.

DATES: Comments are due July 30, 2007. Reply comments (if any) are due August 13, 2007.

ADDRESSES: Send an original and 10 copies of any comments, referring to Amendment No. 5 to Released Rates Decision No. MC–999, to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Herzig, (202) 245–0282. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339].

SUPPLEMENTARY INFORMATION: Prior to the enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Pub. L. 109–59, 119 Stat. 1144 (2005), motor carriers of household goods (HHG) were generally held liable, under 49 U.S.C. 14706, for the actual loss or injury they caused to the property they transported. Because most HHG are ''used,'' the carrier's liability was for the depreciated value of the goods. However, under 49 U.S.C. 14706(f), HHG carriers could, with the permission of the Board, limit their liability by offering ''released rates,'' under which a

carrier's liability is limited to a value established by written declaration of the shipper or by written agreement. The Board has authorized HHG carriers to offer released rates under certain terms and procedures.

The Board's current released rates orders—*Released Rates of Motor Common Carriers of Household Goods,* 5 S.T.B. 1147 (2001), and *Released Rates of Motor Common Carriers of Household Goods,* Amendment No. 4 to Released Rates Decision No. MC–999 (STB served Apr. 22, 2002, and July 26, 2006)—authorize HHG carriers to limit their liability for damage to, or loss of, the goods in their care upon a written declaration of the shipper. Under these orders, HHG carriers could avoid the default cargo liability level by offering their shippers a choice of two alternative carrier-liability options based on the rate that the shipper agreed to pay for the transportation of its goods. Under one option, the carrier's cargo liability is limited to 60 cents per pound per article (''60-cents option'') if the shipper writes a valuation of ''60 cents per pound'' on the bill of lading/contract. In that event, the shipper pays only a base rate for the shipment. Alternatively, for an additional charge, the shipper may obtain ''full value protection'' for the shipped goods (the ''FVP option''), meaning that the carrier is liable for the replacement value of the lost or damaged goods (up to the pre-declared value of the shipment), or, at the carrier's option, for restoring damaged goods to their prior condition.

In section 4207 of SAFETEA–LU, Congress changed the statutorily prescribed, standard cargo liability of HHG carrier from the actual (i.e., depreciated) value of lost or damaged goods to the replacement value of those goods unless the shipper waives in writing that level of protection. *See* 49 U.S.C. 14706(f)(2), (3).[1] Thus, the standard (or default) cargo liability of a HHG carrier is now the replacement value of the goods (for example, the value of a comparable new television to replace a used television that was lost in a household move, rather than the depreciated value of the used television).

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Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 11, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E7–11722 Filed 6–15–07; 8:45 am]

BILLING CODE 4915–01–P

[2] The index is the Consumer Price Index—All Urban Consumers (All Items), published by the Bureau of Labor Statistics of the United States Department of Labor (CPI–U).

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35026]

Napa-Platte Regional Railroad Authority—Modified Rail Certificate

On May 15, 2007, Napa-Platte Regional Rail Authority (NPRRA), a noncarrier, filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, Subpart C, *Modified Certificate of Public Convenience and Necessity,* to operate approximately 41.1 miles of rail line extending from milepost 13.4+/−, near Tabor, to milepost 54.5, near Ravinia, SD (Tabor-Ravinia line or line).[1]

The entire line, from Napa to Platte (entire line), was formerly a part of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company and was authorized for abandonment by the Interstate Commerce Commission in *Richard B. Ogilvie, Trustee of the Property of Chicago, Milwaukee, St. Paul & Pacific Railroad Company—Abandonment—in South Dakota, Iowa and Nebraska,* Docket No. AB–7 (Sub-No. 88) (ICC served May 14, 1980). Although authorized for abandonment, the entire line was subsequently acquired by the State of South Dakota. The State of South Dakota then leased it to NPRRA in 1981. Since then, the entire line has been operated as needed by sublessees pursuant to modified certificates of public convenience and necessity. At milepost 0.0, the line has interchange capability with BNSF Railway Company (BNSF) and, through a haulage agreement with BNSF (convertible to trackage rights), access to Canadian National Railway Company, Union Pacific Railroad Company, and certain other South Dakota short lines.

The rail segment qualifies for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions,* Finance Docket No. 28990F (ICC served July 16, 1981).

[1] The Tabor-Ravinia line is a segment of a larger line leased by NPRRA from the State of South Dakota. The entire line extends from milepost 0.0 in Napa County, SD, to milepost 83.3 in Platte, SD, and consists of three segments (the Napa-Tabor line, from milepost 0.0 to milepost 13.4+/−, the Tabor-Ravinia line, and the Ravinia-Platte line, from milepost 54.4 to milepost 83.3). With the filing of this notice for a modified certificate on the Tabor-Ravinia line, NPRRA simultaneously filed a notice for a lease and operation exemption on the Napa-Tabor line (STB Finance Docket No. 35025). Additionally, The South Dakota Department of Transportation has filed a notice to terminate an existing modified certificate and a notice of interim trail use on the Ravinia-Platte line (STB Finance Docket No. 31874).

According to NPRRA, the State of South Dakota is engaged in negotiations to sell the Tabor-Ravinia line, along with the Napa-Tabor line, to Wagner Native Energy, LLC (Wagner). If that sale is consummated, NPRRA states that it will assign all of its rights in both the Tabor-Ravinia and Napa-Tabor lines to Wagner. NPRRA anticipates that Wagner would then operate these lines as a common carrier, through the use of a third-party rail carrier.

Currently, the Tabor-Ravinia line is out of service and NPRRA states that the line would need to be rehabilitated before actual rail operations can be recommenced. NPRRA anticipates that the sale of the Tabor-Ravinia line to Wagner will facilitate that rehabilitation. If operations were to recommence prior to the anticipated sale of the line to Wagner, NPRRA indicates that it would provide service through a third-party contract operator or a temporary sublease of the line to a third-party rail carrier. NPRRA continues that, in the event that it engages the services of a third-party rail carrier, it will require that the carrier obtain adequate liability insurance coverage.

NPRRA indicates that, at this time, it is not anticipated that there will be any subsidizers of the line, and that, while it is conceivable that NPRRA may receive railroad trust funds for rehabilitation of the line from the State of South Dakota, no such plans currently exist.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street, NW., Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 50 F Street, NW., Suite 7020, Washington, DC 20001.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 7, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–11469 Filed 6–15–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 243X)]

Union Pacific Railroad Company—Abandonment Exemption—in DeKalb County, IL

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 2.3-mile portion of its Barber Greene Spur, from milepost 23.5 to milepost 25.8, in DeKalb County, IL. The line traverses United States Postal Service Zip Code 60115.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 18, 2007, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 28, 2007. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 9, 2007, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by June 22, 2007. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by July 18, 2008, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 8, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–11483 Filed 6–15–07; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,300. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Advisory Committee on the Auditing Profession

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice of intent to establish; request for nominations.

SUMMARY: The Department of the Treasury (the ''Department'') intends to establish the Advisory Committee on the Auditing Profession (the ''Committee'') to assist the Department in evaluating the sustainability of a strong and vibrant auditing profession. The Department is seeking nominations of individuals to be considered for selection as Committee members, and names of professional and public interest groups that should be represented on the Committee.

DATES: Nominations must be received on or before July 11, 2007.

ADDRESSES: Nominations should be sent to *ACAPmembership@do.treas.gov* or Advisory Committee on the Auditing Profession Membership, Office of Financial Institutions Policy, Department of the Treasury, Main Treasury Building, Room 1418, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Gerry Hughes, Financial Analyst, or Timothy M. Hunt, Financial Analyst, Office of Financial Institutions Policy, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 927–6618 (not a toll-free number).

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. II, the Department is publishing this notice that the Department intends to establish the Committee. The Committee's objective will be to provide informed advice and recommendations to the Department on the sustainability of a strong and vibrant public company auditing profession. The Committee's charter is expected to direct it to consider, among other things, the auditing profession's ability to attract and retain the human capital necessary to meet developments in the business and financial reporting environment; audit market competition and concentration; and the financial resources of the auditing profession, including the effect of existing limitations on auditing firms' structure. A resilient and quality public company auditing profession is essential to the strength of the nation's capital markets. Auditors oversee the integrity of financial reporting and disclosure, critical to investor confidence and market efficiency. Because of the importance of the auditing profession to the prosperity and stability of the capital markets in the United States and the rest of the world, the Department

affirms that the Committee is necessary and in the public interest.

The Committee will be directed to conduct its work with a view to furthering the mission of the Department, as the steward of the economic and financial systems of the United States, to promote and encourage the conditions for prosperity and stability in the United States and the rest of the world and to predict and prevent, to the extent possible, economic and financial crises. The charter will provide that the Committee's duties are solely advisory and only extend to the submission of advice or recommendations to the Department. The Committee is expected to meet at such intervals as necessary to carry out its duties. The charter is expected to provide that the full Committee will meet no more than eight times. Meetings of subgroups of the full Committee may occur more frequently.

To achieve the Committee's objective, the Department will assure that the Committee reflects balanced membership and includes a cross-section of between 15 and 21 members representing the views of non-government entities or groups having an interest in the auditing profession, such as auditors, investors, public companies, and other financial market participants. In order to select Committee members who represent the greatest range of interest in the auditing profession, the Department is soliciting suggestions for potential Committee members from a variety of sources, including, but not limited to, professional and public interest groups. Nominations should describe and document the proposed member's qualifications for Committee membership. In addition to individual nominations, the Department is soliciting the names of professional and public interest groups that should have representative members participating on the Committee. Committee members will not receive compensation, but they will be reimbursed for travel expenses consistent with governing Federal law and regulations.

Dated: June 8, 2007

Taiya Smith,

Executive Secretary.

[FR Doc. E7–11700 Filed 6–15–07; 8:45 am]

BILLING CODE 4811–42–P

Corrections

Federal Register

Vol. 72, No. 116

Monday, June 18, 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.

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4006 and 4007

RIN 1212–AB11

Premium Rates; Payment of Premiums; Variable–rate premium; Pension Protection Act of 2006

Correction

In proposed rule document E7–10412 beginning on page 30308 in the issue of Thursday, May 31, 2007, make the following correction:

On page 30313, in the third column, under the heading *E.O. 12866*, in the first paragraph, in the last line, ''agency'' should read ''agency action:''.

[FR Doc. Z7–10412 Filed 6–15–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–1997–2364]

RIN 2126 AB07

Parts and Accessories Necessary for Safe Operation; Lamps and Reflective Devices

Correction

In rule document E7–11112 beginning on page 32011 in the issue of Monday, June 11, 2007, make the following correction:

§ 393.11 [Corrected]

On page 32014, in the second column, amendatory instruction 2, fifth line, ''Deflectors'' should read ''Reflectors''.

[FR Doc. Z7–11112 Filed 6–15–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–157711–02]

RIN 1545–BB61

Unified Rule for Loss on Subsidiary Stock

Correction

In proposed rule document 07–187 beginning on page 2964 in the issue of Tuesday, January 23, 2007, make the following correction:

On page 2968, in the third column, in the second full paragraph, ''*Example 6:* Intragroup spin–off'' should read ''*Example 6: Intragroup spin–off*''.

[FR Doc. C7–187 Filed 6–15–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
June 18, 2007

Part II

Securities and Exchange Commission

17 CFR Parts 240 and 249b

Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249b

[Release No. 34–55857; File No. S7–04–07]

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Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Final rule.

SUMMARY: The Commission is adopting rules to implement provisions of the Credit Rating Agency Reform Act of 2006 (the ''Rating Agency Act''), enacted on September 29, 2006. The Rating Agency Act defines the term ''nationally recognized statistical rating organization,'' provides authority for the Commission to implement registration, recordkeeping, financial reporting, and oversight rules with respect to registered credit rating agencies, and directs the Commission to issue final implementing rules no later than 270 days after its enactment (or by June 26, 2007). The rule and form prescribing the process for a credit rating agency to apply for registration are immediately effective. The remaining rules are effective on June 26, 2007.

EFFECTIVE DATES: June 18, 2007, except that §§ 240.17g-2, 240.17g-3, 240.17g-4, 240.17g-5, and 240.17g-6 are effective on June 26, 2007.

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SUPPLEMENTARY INFORMATION:

I. Background

The term *nationally recognized statistical rating organization* (''NRSRO'') is used in federal and state statutes and regulations to confer regulatory benefits or prescribe requirements based on credit ratings issued by credit rating agencies identified as NRSROs.[1] The process of identifying NRSROs has historically been undertaken by the Commission staff through the issuance of no-action letters where the staff has determined, among other things, that the credit rating agency is recognized nationally by the predominant users of credit ratings as issuing credible and reliable ratings.[2] The Rating Agency Act replaces the no-action letter process—which has been criticized as lacking transparency—with a registration program and Commission oversight of credit rating agencies that choose to be treated as NRSROs.

The Rating Agency Act implements the program for NRSRO registration and oversight by adding definitions to Section 3 of the Securities Exchange Act of 1934 (''Exchange Act''),[3] creating a new Section 15E of the Exchange Act,[4] and amending Section 17 of the Exchange Act.[5] Under these new statutory provisions, a credit rating agency seeking to be treated as an NRSRO must apply for, and be granted, registration with the Commission, make public in its application certain information to help persons assess its credibility, and implement procedures to manage the handling of material nonpublic information and conflicts of interest. In addition, the Rating Agency Act provides the Commission with rulemaking authority to prescribe: the form of the application (including requiring the furnishing of additional information); the records an NRSRO must make and retain; the financial reports an NRSRO must furnish to the Commission on a periodic basis; the specific procedures an NRSRO must implement to manage the handling of material nonpublic information; the conflicts of interest an NRSRO must manage or avoid altogether; and the practices that an NRSRO must not engage in if the Commission determines they are unfair, coercive, or abusive.

II. Timing of Final Rules

On February 2, 2007, the Commission proposed a package of rules pursuant to these grants of rulemaking authority.[6] The rules published today incorporate many of the proposed provisions but also include significant revisions based on the comments received.[7] The Commission, in adopting these rules today, intends that Rule 17g–1 (17 CFR 240.17g–1), Form NRSRO, and 17 CFR 249b.300 be issued in final form and be effective on the date of their publication in the **Federal Register**. The Commission further intends that Rules 17g–2 (17 CFR 240.17g–2), 17g–3 (17 CFR 240.17g–3), 17g–4 (17 CFR 240.17g–4), 17g–5 (17 CFR 240.17g–5), and 17g–6 (17 CFR 240.17g–6) be issued in final form on June 26, 2007 and become effective on that date.

III. Effective Date

Section 553(d) of the Administrative Procedure Act generally provides that, unless an exception applies, a substantive rule may not be made effective less than 30 days after notice of the rule has been published in the

[1] *See, e.g.,* federal statutes: 15 U.S.C. 78c(a)(41) (defining the term ''mortgage related security''); 15 U.S.C. 78c(a)(53)(A) (defining the term ''small business related security''); 15 U.S.C. 80a-6(a)(5)(A)(iv)(I) (exempting certain companies from the provisions of the Investment Company Act of 1940''); Gramm-Leach-Bliley Act, Pub. L. No. 106–102 (1999); Transportation Equity Act for the 21st Century, Pub. L. No. 105–178 (1998); Reigle Community Development and Regulatory Improvement Act of 1994, Pub. L. No. 103–325 (1994); Department of Commerce, Justice, and State, The Judiciary, and Related Agencies Appropriations Act, FY2001, Pub. L. No. 106–553 (2000); Higher Education Amendments of 1992, Pub. L. No. 102–325 (1992); Housing and Community Development Act of 1992, Pub. L. No. 102–550 (1992); Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. No. 102–242 (1991); and Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101–72 (1989); Commission rules: 17 CFR 228.10(e), 229.10(c), 230.134(a)(14), 230.436(g), 239.13, 239.32, 239.33, 240.3a1–1(b)(3), 240.10b-10(a)(8), 240.15c3–1(c)(2)(vi)(E), (F), and (H), 240.15c3–1a(b)(1)(i)(C), 240.15c3–1f(d), 240.15c3–3a, Item 14, Note G, 242.101(c)(2), 242.102(d), 242.300(k)(3) and (l)(3), 270.2a-7(a)(10), 270.3a-7(a)(2), 270.5b-3(c), and 270.10f-3(a)(3); and state rule: Cal. Ins. Code 1192.10.

[2] *See* letter from Nelson S. Kibler, Assistant Director, Division of Market Regulation, Commission, to John T. Anderson, Esquire, of Lord, Bissell & Brook, on behalf of Duff & Phelps, Inc. (February 24, 1982); letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, Commission, to Paul McCarthy, President, McCarthy, Crisanti & Maffei, Inc. (September 13, 1983); letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, Commission, to Robin Monro-Davies, President, IBCA Limited (November 27, 1990); letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, Commission, to David L. Lloyd, Jr., Dewey Ballentine, Bushby, Palmer & Wood (October 1, 1990); letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, Commission, to Gregory A. Root, President, Thomson BankWatch, Inc. (August 6, 1991); letter from Michael A. Macchiaroli Assistant Director, Division of Market Regulation, Commission, to Lee Pickard, Pickard and Djinis LLP (January 25, 1999); letter from Annette L. Nazareth, Director, Division of Market Regulation, Commission, to Mari-Anne Pisarri, Pickard and Djinis LLP (February 24, 2003); letter from Mark M. Attar, Special Counsel, Division of Market Regulation, Commission, to Arthur Snyder, President, A.M. Best Company, Inc. (March 3, 2005); letter from Erik R. Sirri, Director, Division of Market Regulation, Commission, to Neal E. Sullivan, Bingham McCutchen LLP (May 21, 2007); letter from Erik R. Sirri, Director, Division of Market Regulation, Commission, to Yoshihiro Saito, Perkins Coie LLP (May 23, 2007).

[3] 15 U.S.C. 78c.

[4] 15 U.S.C. 78o–7.

[5] 15 U.S.C. 78q.

[6] *See* Exchange Act Release No. 55231 (February 2, 2007), 72 FR 6378 (February 9, 2007) (''Proposing Release'').

[7] These comments are available on the Commission's Internet Web site, located at *http://www.sec.gov/comments/s7–04–07/s70407.shtml,* and in the Commission's Public Reference Room in its Washington, DC headquarters.

Federal Register.[8] One exception to the 30-day requirement is an agency's finding of good cause for providing a shorter effective date.[9]

The Rating Agency Act provides that the new program for NRSRO registration and oversight shall apply on the earlier of the date on which regulations are issued in final form under Section 15E(n) of the Exchange Act, or 270 days after the enactment of the Rating Agency Act, which will be June 26, 2007.[10] The Rating Agency Act voids existing Commission staff no-action letters on and after the effective date of the new program for NRSRO registration and oversight, but creates a transitional measure allowing credit rating agencies with existing no-action letters to continue to act as NRSROs ''during Commission consideration of the application, if such entity has furnished an application for registration.'' [11] Consequently, as noted above, the Commission intends that Rule 17g–1 and Form NRSRO be effective immediately upon publication. Further, the Commission intends that the remaining rules, Rule 17g–2 through Rule 17g–6, be effective on June 26, 2007, the statutory deadline.

Immediate effectiveness of Form NRSRO and Rule 17g–1 is necessary to allow credit rating agencies that are currently the subject of staff no-action letters identifying them as NRSROs to have a period of time to submit applications for registration as NRSROs before the provisions of the Rating Agency Act and the recordkeeping, reporting, and conduct rules issued under the Rating Agency Act become effective, and thus before the no-action letters become void. This will avoid a gap in time when no NRSROs exist, which would disrupt the regulatory use of that term in applicable statutes and regulations, resulting in uncertainty in the marketplace for all persons that rely upon credit ratings issued by NRSROs. Further, this result would be inconsistent with Congressional intent in creating the transitional measure. Finally, the accelerated effectiveness for the remaining rules, Rule 17g–2 through Rule 17g–6, is necessary to meet the statutory deadline.

The primary purpose of the 30-day delayed effectiveness requirement is to give affected parties a reasonable period of time to adjust to the new rules. Here, the existing NRSROs would not be harmed by immediate effectiveness, and would in fact benefit from the opportunity to utilize the transitional measure Congress provided. Further, an entity would not be required to comply with Rule 17g–2 through Rule 17g–6 until its voluntary registration has been approved.

The Commission acted expeditiously in proposing and adopting these rules under a very tight, statutorily-imposed deadline. The Rating Agency Act was enacted on September 29, 2006. Just over four months later, on February 2, 2007, the Commission voted to propose the new rules and form, which were designed to comply with the statutory mandate to establish an entirely new regulatory regime for NRSROs. The Commission voted to adopt these rules and Form NRSRO on May 23, 2007, over a month before the statutory deadline. In doing so, the Commission carefully responded to industry, user, and investor perspectives to ease the transition to a new, Congressionally-created registration and regulatory scheme.

Failure to accelerate effectiveness of Rule 17g–1 through Rule 17g–6 and Form NRSRO could interfere with the goals of the Rating Agency Act. For these reasons, the Commission finds that good cause exists for Rule 17g–1 and Form NRSRO to be immediately effective upon publication, and for Rule 17g–2 through Rule 17g–6 to be effective on June 26, 2007.

IV. Review of Commission Rules

Section 15E(n)(2) of the Exchange Act requires the Commission to review its existing rules using the term ''NRSRO'' within 270 days of its enactment.[12] The statute further provides that the Commission shall amend or revise the rules in accordance with Section 15E(n)(2) of the Exchange Act.[13] The Commission has reviewed all of its rules using the term ''NRSRO.'' The Commission does not believe these rules need to be amended at this time. The term ''NRSRO'' in each rule will refer to an ''NRSRO'' as that term is defined in the Rating Agency Act when the statutory provisions become effective.[14] For example, Commission Rule 15c3–1 (the broker-dealer net capital rule) uses the term ''nationally recognized statistical rating organization'' to prescribe the amount a broker-dealer must haircut proprietary corporate debt securities when computing its regulatory capital.[15] The rule does not otherwise define the term ''nationally recognized statistical rating organization.'' Consequently, after the effective date of the NRSRO regulatory program, the term, as used in this rule, will refer to a credit rating agency that is an NRSRO as determined by the provisions of the Rating Agency Act.[16]

The Commission notes that several commenters raised potential concerns about how other Commission rules may operate after the NRSRO registration and oversight program takes effect.[17] These commenters suggested that requirements in Rule 2a–7 [18] under the Investment Company Act of 1940,[19] which regulates the operation of money market funds, may need to be modified depending on the number of credit rating agencies that become registered as NRSROs.[20] For example, one commenter noted that Rule 2a–7(c)(6)(i)(A)(2) requires a money market fund to re-assess the minimal credit risk of its portfolio whenever it becomes aware that any unrated or second tier security held by the fund has been given a credit rating by any NRSRO below the NRSRO's second highest category.[21] Another commenter noted that Rule 2a–7 prescribes that money market funds determine whether a security is eligible for purchase based on whether it has received a credit rating in one of the two highest categories from any NRSRO.[22] This commenter was concerned that this might lead to money market funds filling portfolios that most NRSROs consider third tier.[23] One of the these commenters also expressed concern that the proposal did not require that an NRSRO have a particular number of credit rating categories or that the categories of one NRSRO might not correspond to those of another NRSRO.[24] Based on the uncertainty of how many credit rating agencies ultimately will register as NRSROs, the Commission intends to monitor for now how the NRSRO regulatory program impacts Rule 2a–7 and the Commission's other rules using the term ''NRSRO.'' As the program develops, the

[8] 5 U.S.C. 553(d).

[9] *Id.*

[10] 15 U.S.C. 78o–7(p).

[11] 15 U.S.C. 78o–7(l).

[12] 15 U.S.C. 78o–7(n)(2).

[13] *Id.*

[14] *See* Sections 3(a)(62) and 15E(l)(2) of the Exchange Act (15 U.S.C. 78c(a)(62) and 15 U.S.C. 78o–7(l)(2)).

[15] *See* 17 CFR 240.15c3–1(c)(2)(vi)(F).

[16] *See* Sections 3(a)(62) and 15E(l)(2) of the Exchange Act (15 U.S.C. 78c(a)(62) and 15 U.S.C. 78o–7(l)(2)).

[17] *See* letter dated March 12, 2007 from Elizabeth Krentzman, General Counsel, Investment Company Institute (''ICI Letter''); letter dated March 12, 2007 from Stephen A. Keen, Attorney, on behalf of Federated Investors, Inc. (''FI Letter''); letter dated April 4, 2007 from Charles S. Morrison, Senior Vice President and Money Market Group Leader, Fidelity Management and Research Company (''FMRC Letter'').

[18] 17 CFR 270.2a–7.

[19] 15 U.S.C. 80a–1 *et seq.*

[20] *See* ICI Letter; FI Letter; FMRC Letter.

[21] *See* FI Letter.

[22] *See* FMRC Letter.

[23] *Id.*

[24] *See* FI Letter.

Commission will evaluate whether modifications to these rules would be appropriate.

V. The Final Rules

A. Rule 17g–1—Registration Requirements

The Rating Agency Act, through the enactment of new Section 15E of the Exchange Act, provides the Commission with rulemaking authority with respect to the process for applying for registration as an NRSRO, keeping an NRSRO registration current, and withdrawing an NRSRO registration.[25] The Commission proposed to implement its rulemaking authority in these areas through a new rule, Rule 17g–1. The provisions of proposed Rule 17g–1 would have prescribed: How a credit rating agency must apply to be registered as an NRSRO; the form of the application; how an NRSRO must make non-confidential information in the application public; how an NRSRO must apply to be registered in an additional class of credit ratings; how an NRSRO must update its application; how an NRSRO must annually certify that the information and documents in its registration continue to be accurate; and how an NRSRO must provide notice of the withdrawal of its registration.

As discussed below, the Commission is adopting Rule 17g–1 with certain modifications that address issues raised by commenters, restructure the order of the paragraphs, and remove text that was unnecessary. Any textual changes not specifically discussed are non-substantive and designed to make the rule text more cohesive and consistent both within the rule and across the other NRSRO rules published today.

1. Paragraph (a) of Rule 17g–1

As adopted, paragraph (a) of Rule 17g–1 provides that a credit rating agency applying to register with the Commission as an NRSRO must furnish an application on Form NRSRO. Section 15E(a)(1)(A) of the Exchange Act provides that a credit rating agency applying for registration must furnish the Commission with an application in a form prescribed by Commission rule.[26] Paragraph (a) of Rule 17g–1, as proposed, similarly provided that a credit rating agency applying to be registered with the Commission as an NRSRO must furnish the Commission with an application on Form NRSRO that follows all instructions for the Form. The Commission did not receive any comments on the proposed rule text of this paragraph and is adopting it substantially as proposed with one modification. Specifically, there is no longer a reference in the text to the ''credit ratings described in section 3(a)(62)(B) of the [Exchange] Act (15 U.S.C. 78c(a)(62)).'' This reference to a component of the statutory definition of ''NRSRO'' in the proposed rule was redundant and unnecessary. A credit rating agency, by statutory definition, must apply to be registered in one or more of the classes of credit ratings identified in section 3(a)(62)(B) of the Exchange Act.[27]

2. Paragraph (b) of Rule 17g–1

As adopted, paragraph (b) of Rule 17g–1 provides a mechanism for an NRSRO registered for fewer than the five classes of credit ratings identified in the definition of NRSRO to apply to be registered in an additional class.[28] Specifically, the NRSRO must apply by furnishing an amendment on Form NRSRO.[29] This provision was proposed in paragraph (e) of Rule 17g–1.

Section 15E(a)(1)(B) of the Exchange Act, prescribes certain minimum information the credit rating agency must provide in its application for registration as an NRSRO.[30] This includes information regarding the classes of credit ratings set forth in the definition of ''NRSRO'' in Section 3(a)(62)(B) of the Exchange Act with respect to which the credit rating agency ''intends to apply for registration.''[31] A credit rating agency may apply to be registered for fewer than all five classes of credit ratings described in Section 3(a)(62)(B) of the Exchange Act.[32] Accordingly, this provision provides a mechanism for an NRSRO to apply to be registered in an additional class.[33]

The application to register for an additional class will be subject to the requirements in Section 15E of the Exchange Act[34] applicable to an application to be registered as an NRSRO. This means the time periods for the Commission to act on the application set forth in Sections 15E(a)(2)(A) and (B) of the Exchange Act also will apply to an application to be registered in an additional class of credit ratings.[35]

Finally, the provisions of paragraphs (c) and (h) respectively, regarding the requirement to notify the Commission and amend the application prior to final Commission action and when an application is deemed to have been furnished to the Commission also apply to these applications.

The Commission did not receive any comments on these provisions. The Commission is adopting them substantially as proposed with several technical modifications. The rule text is modified to delete language instructing the NRSRO to indicate where appropriate on the form the additional class of credit ratings for which it is applying for registration. In its place, the rule text provides that the NRSRO must follow all applicable instructions for the Form, which include an instruction to indicate where appropriate on the Form the additional class of credit ratings for which registration is sought. The Commission is adopting the provision with the modifications discussed above.

3. Paragraph (c) of Rule 17g–1

As adopted, paragraph (c) of Rule 17g–1 provides that an applicant for registration and an NRSRO applying to be registered in an additional class of credit ratings must promptly furnish the Commission with a notice if information in the application becomes, or is found to be, materially inaccurate before the Commission has granted or denied the application. Thereafter, the applicant will be required to update the application with complete and accurate information by submitting an amended application on Form NRSRO.[36]

These provisions were proposed in paragraphs (c) and (e) of Rule 17g–1 for initial applicants and for NRSROs applying to be registered in an additional class of credit ratings, respectively. The notification provision is designed to alert the Commission as soon as possible that the application under consideration is materially inaccurate. The intent is to avoid situations where the Commission continues to review an application that is no longer materially accurate. The Commission has modified Form NRSRO to further clarify how a pending application should be updated using Form NRSRO. Specifically, the Form now has a check box for ''Application Supplement'' and specific instructions

[25] 15 U.S.C. 78o–7.

[26] 15 U.S.C. 78o–7(a)(1)(A).

[27] *See* 15 U.S.C. 78c(a)(62).

[28] *See* 15 U.S.C. 78c(3)(a)(62)(B).

[29] This provision further implements Section 15E(a)(1) of the Exchange Act, which requires the Commission, by rule, to prescribe the form of an application for registration (15 U.S.C. 78o–7(a)(1)).

[30] 15 U.S.C. 78o–7(a)(1)(B).

[31] *See* Section 15E(a)(1)(B)(vii) of the Exchange Act (15 U.S.C. 78o–7(a)(1)(B)(vii)).

[32] 15 U.S.C. 78c(a)(62)(B).

[33] This provision further implements Section 15E(a)(1) of the Exchange Act, which requires the Commission, by rule, to prescribe the form of an application for registration (15 U.S.C. 78o–7(a)(1)).

[34] 15 U.S.C. 78o–7.

[35] 15 U.S.C. 78o–7(a)(2)(A) and (B).

[36] This provision is being implemented under the Commission's authority in Section 15E(a)(1)(A) of the Exchange Act to prescribe the form of the application (15 U.S.C. 78o–7(a)(1)(A)).

about how to complete the Form in this instance. The Commission did not receive any comments on these provisions and is adopting them with the modifications discussed above.

4. Paragraph (d) of Rule 17g–1

As adopted, paragraph (d) of Rule 17g–1 provides a mechanism for an entity that has applied to be registered as an NRSRO, or an NRSRO that has applied to be registered in an additional class of credit ratings, to withdraw the registration application before the Commission takes final action on the application.[37] Specifically, it requires the applicant to furnish the Commission with a written notice of withdrawal executed by a duly authorized person.

The application provisions were proposed in paragraphs (b)(2) and (e) of Rule 17g–1 for initial applicants and for applications to be registered in an additional class of credit ratings, respectively. The requirement for execution by a duly authorized person is designed to ensure that the withdrawal notice reflects the intent of the credit rating agency. The Commission did not receive any comments on these provisions and is adopting them substantially as proposed.

5. Paragraph (e) of Rule 17g–1

As adopted, paragraph (e) of Rule 17g–1 provides that an NRSRO updating its application for registration pursuant to Section 15E(b)(1) of the Exchange Act[38] must promptly furnish the amendment to the Commission on Form NRSRO.[39] Section 15E(b)(1) of the Exchange Act requires an NRSRO to promptly update its application for registration if, after registration, any information or document provided as part of the application becomes materially inaccurate.[40] The statute further provides that the information on credit ratings performance statistics (discussed below) must only be updated on an annual basis and that the certifications from qualified institutional buyers (QIBs), discussed below, are not required to be updated.[41] This provision was proposed in paragraph (f) of Rule 17g–1.

The Commission has added in the instructions to Form NRSRO a description of this statutory requirement as a means to alert NRSROs that they must promptly update information or a document submitted on or with their Form NRSRO that has become materially inaccurate.

The Commission is not defining the term ''promptly'' as used in Section 15E(b)(1) of the Exchange Act.[42] The Commission, however, did express its view in the proposing release that meeting the statutory requirement to update a registration when information becomes materially inaccurate should not take more than two days. In response, five commenters stated that it would be unreasonable to expect an NRSRO to submit an amendment in two days.[43] Three commenters proposed that the Commission define the term ''promptly'' to mean 10 days.[44] One commenter suggested 20 days.[45] Another commenter suggested the Commission use a facts and circumstances standard for determining whether an amendment was ''promptly'' furnished.[46] The Commission agrees that the analysis of whether an amendment is furnished promptly will depend on the facts and circumstances. For example, if an NRSRO changes its principal business address, it should not take more than a few days to complete Form NRSRO (inputting the new information), have the Form executed, and furnish the Form to the Commission. On the other hand, it may take a few days longer to complete the Form if the information or documents in an Exhibit become materially inaccurate.

One commenter also stated that the rule should require an update of the registration application only when the information in the current registration application becomes ''materially inaccurate.''[47] In response, the Commission notes that the requirement to update an application arises from Section 15E(b)(1) of the Exchange Act, which provides, in pertinent part, that an NRSRO shall promptly update its application for registration ''if any information or document provided therein becomes materially inaccurate.''[48] As noted above, the instructions to Form NRSRO have been modified to include a description of this statutory provision.

In all other respects, the Commission is adopting the provision substantially as proposed.

6. Paragraph (f) of Rule 17g–1

As adopted, paragraph (f) of Rule 17g–1 provides that an NRSRO updating its application for registration pursuant to Section 15E(b)(2) of the Exchange Act[49] (the annual certification) must furnish the amendment to the Commission on Form NRSRO.[50] Section 15E(b)(2) of the Exchange Act requires an NRSRO to furnish the Commission with an amendment to its registration not later than 90 days after the end of each calendar year.[51] This section further provides that the amendment must (1) certify that the information and documents provided in the application for registration (except the QIB certifications) continue to be accurate and (2) list any material change to the information and documents during the previous calendar year.[52]

This provision was proposed in paragraph (g) of Rule 17g–1. A commenter suggested that the proposed provision should be revised to permit the filing of the annual certification within 90 days after the end of an NRSRO's fiscal year (if different than the end of the calendar year).[53] However, as noted, the calendar year requirement is statutory. The instructions to Form NRSRO have been modified from those proposed to include a description of this statutory provision. In all other respects, the Commission is adopting the provision substantially as proposed.

7. Paragraph (g) of Rule 17g–1

As adopted, paragraph (g) of Rule 17g–1 provides that an NRSRO withdrawing its registration pursuant to Section 15E(e)(1) of the Exchange Act[54] must furnish the Commission with a notice of withdrawal on Form NRSRO. The rule further provides that the withdrawal becomes effective 45

[37] The withdrawal of a granted registration is discussed separately below.

[38] 15 U.S.C. 78o–7(b)(1).

[39] The Commission is implementing this provision under Section 15E(a)(1) of the Exchange Act (15 U.S.C. 78o–7(a)(1)), which requires the Commission, by rule, to prescribe the form of an application for registration.

[40] 15 U.S.C. 78o–7(b)(1).

[41] *Id.*

[42] *Id.*

[43] *See* letter dated March 12, 2007 from William G. Connolly, on behalf of A.M. Best Company, Inc. (''A.M. Best Letter''); letter dated March 12, 2007 from Yasuhiro Harada, President, Ratings & Investment Information (''R&I Letter''); letter dated March 12, 2007 from Jeanne M. Dering, Executive Vice President, Moody's Investors Services (''Moody's Letter''); letter dated March 12, 2007 from Kent Wideman, Group Managing Director, and Mary Keogh, Managing Director, Dominion Bond Rating Service (''DBRS Letter''); letter dated March 12, 2007 from Charles D. Brown, General Counsel, Fitch Ratings (''Fitch Letter'').

[44] *See* R&I Letter; A.M. Best Letter; and Fitch Letter.

[45] *See* Moody's Letter.

[46] *See* DBRS Letter.

[47] *See* Moody's Letter.

[48] 15 U.S.C. 78o–7(b)(1).

[49] 15 U.S.C. 78o–7(b)(2).

[50] The Commission is implementing this provision under Section 15E(b)(2) of the Exchange Act (15 U.S.C. 78o–7(b)(2)), which requires the Commission, by rule, to prescribe the form of the annual certification.

[51] 15 U.S.C. 78o–7(b)(2).

[52] *Id.*

[53] *See* Fitch Letter.

[54] 15 U.S.C. 78o–7(e)(1).

calendar days after the furnishing of the form. Section 15E(e)(1) of the Exchange Act[55] provides that an NRSRO may withdraw from registration, subject to such terms and conditions the Commission may establish as necessary in the public interest or for the protection of investors, by furnishing the Commission with a written notice of withdrawal.[56] The rule text references this statutory standard.

This provision was proposed in paragraph (h) of Rule 17g–1 without specifying the form of the notice or the conditions for withdrawal. A commenter suggested that the withdrawal provision be modified to provide that the withdrawal of the registration becomes effective within 90 days of the notice and that the notice be provided through an amendment to registration furnished on Form NRSRO.[57] The Commission did note in the proposing release that the conditions for withdrawal potentially could include a requirement that the NRSRO provide public notice that its credit ratings will cease to be eligible for regulatory use.

The Commission agrees with the commenter that the notice should be furnished on Form NRSRO. This provides for public notice of the withdrawal, since the current Form NRSRO must be made publicly available pursuant to Section 15E(a)(3) of the Exchange Act[58] and Rule 17g–1(i) discussed below. The Commission also agrees with the commenter that in the normal course an NRSRO's withdrawal of registration should become effective within a prescribed time period. This will provide a degree of certainty to the NRSRO as to when it will no longer be subject to the Commission's regulatory program. It also will be consistent with withdrawal requests by certain other regulated entities. For example, a broker-dealer's request for withdrawal of its registration becomes effective within 60 days of the filing of the appropriate form.[59] The Commission also believes users of credit ratings should have adequate prior notice of an NRSRO's intent to withdraw its application. This will give them notice that they will no longer be able to rely on the entity's credit ratings to meet statutory or regulatory requirements using the term ''NRSRO.'' It also will provide them with notice that the entity will no longer be subject to the Commission's oversight, including requirements to disclose information about its performance, methodologies, procedures, and organization.

The Commission believes the 45 calendar day time period for the withdrawal to become effective is necessary in the public interest or for the protection of investors for several reasons. First, as discussed below, pursuant to paragraph (i) of Rule 17g–1, an NRSRO must make its current Form NRSRO publicly available within 10 business days of being furnished to the Commission. Consequently, notice of an NRSRO's withdrawal will be made publicly available at least 30 calendar days before becoming effective. This notice will provide users of credit ratings with time to prepare for the NRSRO's withdrawal. Second, subject to certain limited exceptions, an entity acting as a ''broker'' or ''dealer'' as defined in Sections 3(a)(4) and (5) of the Exchange Act[60] respectively must register with the Commission.[61] Conversely, an entity may act as a ''credit rating agency'' as defined in Section 3(a)(61) of the Exchange Act[62] without being required to register with the Commission. In this sense, registration as an NRSRO is more voluntary than registration as a broker-dealer. Therefore, a shorter time period to withdraw an NRSRO registration is appropriate.

Form NRSRO has been modified to include a checkbox to indicate when the Form is being furnished to withdraw a registration and the instructions for the Form have been modified from those proposed to include an explanation of how to complete the Form in this case. Specifically, an NRSRO would complete each Item on the Form, except Item 6, and have the Form executed.

For these reasons, the Commission is adopting the provision in Rule 17g–1 concerning a withdrawal of registration with the modifications described above.

8. Paragraph (h) of Rule 17g–1

As adopted, paragraph (h) of Rule 17g–1 provides that a Form NRSRO submitted to the Commission pursuant to any provision in Rule 17g–1 will be deemed furnished to the Commission on the date that the Commission receives a complete and properly executed Form NRSRO that follows all applicable instructions for the form.[63] The requirement for completeness comports with the requirements imposed on other types of registrants under the Exchange Act.[64] In addition, Section15E(a)(2)(A) of the Exchange Act requires the Commission to grant an application for registration as an NRSRO or commence proceedings on whether to deny the application within 90 days from the date the application is furnished to the Commission or a longer period if the applicant consents.[65] Further, if proceedings are commenced, Section 15E(a)(2)(B) of the Exchange Act[66] requires the Commission to conclude them within 120 days of the date the application is furnished to the Commission.[67] These statutory requirements make it necessary for the Commission to receive a complete initial application before the 90-day and 120-day periods begin to run.

Rule 17g–1, as proposed, explicitly applied the standard described above for when a Form NRSRO would be deemed ''furnished'' for submissions of the Form to apply for registration and to add a class of credit ratings to an existing registration. The Commission did not receive any comments on these provisions as proposed.

Rule 17g–1, as adopted, clarifies that the ''when furnished'' standard also applies to furnishings of Form NRSRO to update a registration, make the annual certification, and withdraw a registration. As discussed above, amendments to update materially inaccurate information must be furnished promptly, annual certifications must be furnished within 90 days of the end of the calendar year, and withdrawals of registration become effective in 45 calendar days. Therefore, a Form NRSRO submitted for these purposes will be deemed ''furnished'' upon the submission of a complete and properly executed form.

Rule 17g–1(h), as adopted, contains a provision stating that the Commission will, to the extent permitted by law, keep confidential information that is furnished on a confidential basis and requested to be kept confidential. As in

[55] *Id.*

[56] *Id.*

[57] *See* Moody's Letter.

[58] 15 U.S.C. 78o–7(a)(3).

[59] *See* 17 CFR 240.15b6–1.

[60] 15 U.S.C. 78c(a)(4) and (5).

[61] *See* Section 15 of the Exchange Act (15 U.S.C. 78o).

[62] 15 U.S.C. 78c(a)(61).

[63] This provision is adopted under the Commission's authority in Section 15E(a)(1)(A) of the Exchange Act to prescribe the form of the application (15 U.S.C. 78o–7(a)(1)(A)).

[64] *See, e.g.*, 17 CFR 240.15b1–1 and 17 CFR 240.15b3–1 (broker-dealers); 17 CFR 240.15Ba2–1 (municipal securities dealers); 17 CFR 240.17Ab2–1 (clearing agencies); and 17 CFR 240.17Ac2–1 (transfer agents).

[65] 15 U.S.C. 78o–7(a)(2)(A).

[66] 15 U.S.C. 78o–7(a)(2)(B).

[67] Under Section 15E(a)(2)(B)(iii) of the Exchange Act, the Commission can extend this period for an additional 90 days for good cause or for such other period as the applicant consents (15 U.S.C. 78o–7(a)(2)(B)(iii)). An applicant will be required to consent to extend both the period for the Commission to make the initial determination and the 120-day period to conclude proceedings; since the 120-day period begins when the application is furnished to the Commission, not when the Commission determines to commence proceedings.

any situation where a person wishes to obtain confidential treatment for information provided to the Commission, an applicant and NRSRO must comply with the requirements of the Exchange Act governing confidential treatment.[68] This provision has been added to highlight for credit rating agencies and NRSROs the fact that information required by Form NRSRO includes information that will be furnished ''on a confidential basis.''[69] Some of the information to be furnished to the Commission ''on a confidential basis'' in the Form is required by Section 15E(a)(1)(B) of the Exchange Act,[70] and the Commission will consider requests for confidential treatment for that information. In addition, certain other information also is required in the Form and it may be appropriate for the Commission to provide confidential treatment to some of this information. The Commission will evaluate all requests for confidential treatment under the existing rules governing confidential treatment for information furnished to the Commission.[71]

For these reasons, the Commission is adopting the provision in Rule 17g–1 concerning when a Form NRSRO will be deemed to have been furnished with the modifications described above.

9. Paragraph (i) of Rule 17g–1

As modified, paragraph (i) of Rule 17g–1 requires that an NRSRO make its current Form NRSRO and information and documents submitted in Exhibits 1 though 9 publicly available within 10 business days of being granted an initial registration or registration in an additional class of credit ratings and within 10 business days of furnishing an update to amend information on the form, to provide the annual certification, and to withdraw a registration. Section 15E(a)(3) of the Exchange Act provides that the Commission, by rule, shall require an NRSRO, after registration, to make the information submitted in its application and any amendments publicly available on its Web site or through another comparable, readily accessible means.[72] The 10 business day period is intended to provide the NRSRO with sufficient time to make the information public and designed to ensure that users of credit ratings have access to the information within a reasonably short timeframe.

This provision was proposed in paragraph (d) of Rule 17g–1, except that the time period to make the information publicly available was proposed to be five business days. The Commission received three comments on the five business day time period. Two commenters stated that five business days was not enough time to make their application information publicly available, given the volume of information.[73] They commented that the time period should be 15 and 20 business days, respectively.[74] The third commenter stated that the five business day time period should not be lengthened as the information is an important way for users of credit ratings to become familiar with a new NRSRO.[75]

The Commission agrees with the third commenter that making the information publicly available as soon as possible will be an important means for users of credit ratings to understand the methodologies, procedures, and business models of new NRSROs. At the same time, the Commission agrees with the two other commenters that larger more complex NRSROs could have substantial amounts of information in their applications, which may make it difficult to provide all this information in a publicly available format in five business days. Therefore, the Commission is lengthening the time period to ten business days. This is shorter than the 15 and 20 day periods advocated by the two commenters. However, as discussed below, Form NRSRO has been modified in ways that reduce the volume of information that must be made publicly available. Consequently, the Commission believes 10 business days will be a sufficient amount of time.

Finally, while Section 15E(a)(3) of the Exchange Act[76] does not address whether an application to register as an NRSRO shall be made publicly available prior to registration, this type of information typically would be made available by the Commission to members of the public before the application is acted on by the Commission.[77] Two commenters, both current NRSROs, stated that the Commission should not make information in the application available to the public until after registration was granted.[78] The Commission notes that an applicant can seek confidential treatment for information in the application under existing laws and rules governing confidential treatment.[79] The Commission will accord this information confidential treatment to the extent permitted by law. This is consistent with how the Commission treats applications of other entities.

B. Form NRSRO

The Commission proposed Form NRSRO to serve four functions: For a credit rating agency to apply for registration as an NRSRO; for an NRSRO to apply to be registered in an additional class of credit ratings; for an NRSRO to update public information required to be disclosed and kept accurate on the Form; and for an NRSRO to make an annual certification. Proposed instructions for the Form described how an applicant, and after registration, an NRSRO, should complete the Form in each of these circumstances.

The Commission believes that having just one form (and one set of instructions) will reduce the burden on applicants, NRSROs, and Commission staff. For example, it will reduce the complexity of having different forms for the application, amendments, and annual certification. Using one form also will allow NRSROs to more quickly become familiar with the Form and its instructions, which will reduce the potential for making mistakes in completing the Form. It also will assist users of credit ratings in understanding the Form and public Exhibits and where to look on the Form for specific information.

As discussed below, the Commission is adopting Form NRSRO with substantial modifications that address issues commenters raised and allow the Form to be used to furnish a notice of withdrawal of registration. Much of the information elicited in the Form is required to be submitted to the Commission pursuant to Section 15E(a)(1)(B) of the Exchange Act.[80] The Commission, under authority in Section 15E(a)(1)(B)(x), is requiring certain additional information.[81] The Commission believes this additional information elicited in the Form is necessary or appropriate in the public

[68] *See, e.g.*, Section 24 of the Exchange Act (15 U.S.C. 78x), 17 CFR 240.24b–2, 17 CFR 200.80 and 17 CFR 200.83.

[69] *See, e.g.*, Section 15E(a)(1)(B)(viii) of the Exchange Act.

[70] *See* Sections 15E(a)(1)(B)(viii) and (ix) of the Exchange Act (15 U.S.C. 78o–7(a)(1)(B)(viii) and (ix)).

[71] *See* 17 CFR 200.80 and 17 CFR 200.83.

[72] 15 U.S.C. 78o–7(a)(3).

[73] *See* DBRS Letter; Fitch Letter.

[74] *See* Fitch Letter and DBRS Letter, respectively.

[75] *See* ICI Letter.

[76] 15 U.S.C. 78o–7(a)(3).

[77] *See* 17 CFR 200.80(b)(4) and 17 CFR 200.80a. 17 CFR 200.80a contains a compilation of records generally available at the public reference room in the principal office of the Commission, including, for example, applications for registration as a broker-dealer or investment adviser.

[78] *See* DBRS Letter; A.M. Best Letter.

[79] *See* 17 CFR 200.80 and 17 CFR 200.83.

[80] 15 U.S.C. 78o–7(a)(1)(B).

[81] 15 U.S.C. 78o–7(a)(1)(B)(x).

interest or for the protection of investors because, as discussed below, it will: (1) Assist the Commission in making the findings required in Section 15E(a)(2)(C) of the Exchange Act with respect to whether an applicant should be granted registration as an NRSRO;[82] (2) assist the Commission in making the findings required in Section 15E(d) of the Exchange with respect to whether the Commission should censure, place limitations on the activities, functions or operations of, suspend for a period not exceeding 12 months, or revoke the registration of an NRSRO;[83] (3) assist the Commission in reviewing whether an NRSRO is complying with Section 15E of the Exchange Act[84] and the Commission's rules thereunder; and (4) provide users of credit ratings with information that will assist them in comparing NRSROs and understanding how a given NRSRO conducts its activities.

1. Checkboxes Indicating Nature of Submission

The first entry an applicant or NRSRO must make on Form NRSRO is to indicate, by checking the appropriate box, the reason the form is being furnished: To apply for registration as an NRSRO; to apply to be registered in an additional class of credit ratings; to supplement either type of application while the application is pending; to update public information on the Form that has become materially inaccurate; to make the annual certification; and to provide notice of a withdrawal of registration. If the Form is furnished to supplement an application or update a registration, the NRSRO also must identify by number the specific items or Exhibits on the form that are being supplemented or amended. For example, if the NRSRO is furnishing an update to its registration because its address and organizational structure have changed, the NRSRO is required to enter ''Item 1C'' and ''Exhibit 4'' in the appropriate field on the Form. The Form, as proposed, required a brief description of the nature of the amendment. This requirement has been eliminated to simplify the process of completing the Form.

The Commission also has added two checkboxes that were not on the proposed version of the Form. The first new checkbox—''Application Supplement''—is for when a credit rating agency applying for registration as an NRSRO or an NRSRO applying to be registered in an additional class of credit ratings must furnish an amendment to its application because information submitted in the application is or has become materially inaccurate. As proposed, an NRSRO would have checked the more generic ''Amendment'' checkbox. The Commission added a separate checkbox to distinguish amendments relating to a pending application from other amendments, which will make the reason for the furnishing of the Form more transparent.

Second, the Commission added a checkbox to indicate when the Form is being furnished to withdraw a registration in light of the change to Rule 17g–1 requiring the notice of withdrawal to be furnished on Form NRSRO.

2. Item 1 (Identifying Information)

As adopted, Item 1 requires an applicant and NRSRO to enter on to Form NRSRO identifying information about itself and its contact person. The instructions for Form NRSRO provide that the individual listed as the contact person must be authorized to receive all communications and papers from the Commission and will be responsible for their dissemination within the NRSRO. One commenter suggested that Item 1 require the telephone number, fax, and email address of the contact person.[85] The Commission elicits the telephone number for broker-dealer contact persons.[86] The number of NRSROs will be substantially smaller than the number of registered broker-dealers. The Commission believes at this time it will be able to easily obtain the contact information for the contact person without the necessity of having the information disclosed on the Form.

The instructions to Item 1 of Form NRSRO indicate that the name entered on Line A of Item 1 must be the ''person'' that is applying for registration or registered as the NRSRO. The instructions further clarify through the definition of ''person'' that a separately identifiable department or division of a corporation or company may be registered as an NRSRO. This clarification had been made because certain credit rating agencies provide their credit rating services through operating divisions that may be a part of a larger legal entity or encompass several different legal entities located throughout the world.[87] In an effort to more narrowly tailor the requirements for registration, the Commission believes it is appropriate in these circumstances to permit the operating division to register as the NRSRO as opposed to the larger legal entity that may engage in activities not intended to be regulated under the Rating Agency Act. Similarly, the Commission believes it is appropriate that the registered operating division include each separate legal entity that provides credit rating services, provided the operating division treats the credit ratings of the separate legal entities as its own and has global procedures, methodologies, policies, and controls that apply to the separate legal entities.

The instructions to Form NRSRO now include a definition of ''separately identifiable department or division'' that is designed with these goals in mind.[88] The first component of the definition is that the operating division must be a unit of a corporation or company that is under the direct supervision of an officer or officers designated by the board of directors of the corporation as responsible for the day-to-day conduct of the corporation's credit rating activities for one or more affiliates, including the supervision of all employees engaged in the performance of such activities. The second component of the definition is that all of the records relating to the operating division's credit rating activities must be separately created or maintained in or extractable from its own facilities or the facilities of the corporation, and such records must be maintained or otherwise accessible to permit independent examination for, and enforcement by, the Commission of Section 15E of the Exchange Act[89] and rules and regulations promulgated thereunder.

In all other respects, Item 1 to Form NRSRO is being adopted substantially as proposed.

3. Certification

The applicant or NRSRO must have a duly authorized individual execute a certification that the information and statements furnished in the Form NRSRO are accurate in all significant respects. The Commission added the ''in all significant respects'' language to the certification in response to comments that the certification, as proposed, could have been construed to hold the certifying individual to an unrealistic standard of having to ensure the Form

[82] 15 U.S.C. 78o–7(a)(2)(C).

[83] 15 U.S.C. 78o–7(d).

[84] 15 U.S.C. 78o–7.

[85] *See* DBRS Letter.

[86] *See* Form BD—Uniform Application for Broker-Dealer Registration.

[87] *See, e.g.*, letter dated March 12, 2007 from Vickie A. Tillman, Executive Vice President, Standard & Poors (''S&P Letter''); DBRS Letter; Fitch Letter; Moody's Letter.

[88] *See* 15 U.S.C. 80b–2 for a similar definition of separately identifiable departments or divisions of banks.

[89] 15 U.S.C. 78o–7.

did not include even trivial inaccuracies.[90] The additional language is intended to allay these concerns. In light of this new language, the instructions for the Form now clarify that the Chief Executive Officer or the President of the applicant or NRSRO, or an individual with similar responsibilities, must execute the certification. This is designed to ensure that the person executing the certification has responsibilities that will make the person aware of the basis for the information being provided in the form.

In all other respects, the language of the certification is being adopted substantially as proposed.

4. Item 2 (Legal Status, Place of Formation, Fiscal Year End)

As adopted, Item 2 requires an applicant and NRSRO to enter on to Form NRSRO information about its legal status (for example, corporation or partnership), the place and date of its formation, and its fiscal year end. The information with respect to the fiscal year end of the applicant or NRSRO is relevant because Form NRSRO requires applicants to submit audited financial statements with the application and Rule 17g–3 requires NRSROs to annually furnish the Commission with audited financial statements covering the previous fiscal year. The Commission did not receive any comments on this provision and is adopting it substantially as proposed.

5. Item 3 (Credit Rating Affiliates)

As discussed above, commenters with global operations stated that a credit rating agency with separate legal entities in different countries should be able to include them in a single NRSRO registration.[91] The Commission agrees that permitting a single registration is appropriate in that it will lessen the burden of having a parent company register multiple legal entities that make up the parent company's credit rating division. Consequently, an applicant with affiliates that would be, or an NRSRO with affiliates that are, a part of its registered separately identifiable department or division must identify and provide the address of each such affiliate. The instructions to Form NRSRO clarify that any credit rating issued by a credit rating affiliate will be considered a credit rating issued by the NRSRO for purposes of Section 15E of the Exchange Act[92] and the regulations thereunder. For example, the provisions in Rule 17g–5 with respect to issuing or maintaining credit ratings while having certain conflicts of interest will apply.

The instructions also provide that an applicant and NRSRO in completing Form NRSRO must incorporate information about the credit ratings, methodologies, procedures, policies, financial condition, results of operations, and organizational structure of each credit rating affiliate identified in Item 3 in the other items and Exhibits. For example, the description of the procedures and methodologies for determining credit ratings in Exhibit 2 must include the procedures and methodologies used by the credit rating affiliates.

For these reasons, the Commission is adopting Item 3 to Form NRSRO as described above.

6. Item 4 (Compliance Officer)

As adopted, Item 4 requires an applicant and NRSRO to provide the name and address of its designated compliance officer required under Section 15E(j) of the Exchange Act.[93] This person is responsible for administering the policies and procedures of the credit rating agency to prevent the misuse of nonpublic information, to manage conflicts of interest, and to ensure compliance with the securities laws and the rules and regulations under those laws. The Commission did not receive any comments on this provision and is adopting it substantially as proposed.

7. Item 5 (Method of Making Form and Exhibits Publicly Available)

As adopted, Item 5 requires an applicant and NRSRO to describe how it will make, or makes, its current Form NRSRO and Exhibits 1 through 9 publicly available pursuant to Section 15E(a)(3) of the Exchange Act[94] and Rule 17g–1(i) thereunder. As discussed above, paragraph (i) of Rule 17g–1 is being adopted under Section 15E(a)(3) of the Exchange Act, which provides that the Commission shall, by rule, require an NRSRO, upon the granting of its registration, to make the information submitted to the Commission in the initial application, amendments, or annual certifications publicly available on the NRSRO's Web site or through another comparable, readily accessible means.[95] As discussed above, paragraph (i) of Rule 17g–1 requires an NRSRO to make its current Form NRSRO and Exhibits 1 through 9 publicly available within 10 business days after the date of the Commission order granting an initial application and an application to be registered in an additional class of credit ratings and within 10 business days after furnishing the Commission with an amendment on Form NRSRO (including an annual certification and withdrawal of registration). This information elicited in Item 5 will assist the Commission in reviewing whether the NRSRO is complying with this requirement and assist the public in locating the information.

The Commission did not receive any comments on this provision and is adopting it substantially as proposed.

8. Item 6 (Classes of Credit Ratings for Which Registration Is Sought and QIB Certifications)

An applicant for registration as an NRSRO or an NRSRO applying to add another class of credit ratings to its registration must complete Item 6 of Form NRSRO. This item elicits information about the classes of credit ratings for which the applicant is applying to be registered. It also requires the applicant to attach the requisite number of QIB certifications (two for each class of credit rating for which registration is sought and at least 10 with an initial application).

Item 6 elicits the approximate number of credit ratings issued in each class as of the application date. Commenters objected to the requirement to provide the number of credit ratings in a particular class because it could make it more difficult for new entrants to obtain business.[96] The Commission believes that users of credit ratings will find this information useful in understanding an NRSRO. For example, it will provide information as to how broad an NRSRO's coverage is with respect to issuers and obligors within a particular class of credit ratings.

Item 6 also elicits the date the applicant first began issuing credit ratings in that class on a continuous basis without interruption. The Form, as proposed, required the applicant to provide the number of years it has been issuing credit ratings on a continuous basis. One commenter suggested that an NRSRO be required to provide the date of first issuance, instead of the number of years, to avoid the necessity of having to frequently update the information.[97] The Commission agrees with the commenter that this will make the information submitted on the Form less subject to change and reduce the

[90] *See* Letter dated March 26, 2007 from Vickie A. Tillman, Executive Vice President, Standard & Poors (''S&P 2nd Letter''); Moody's Letter.

[91] *See* DBRS Letter; Fitch Letter.

[92] 15 U.S.C. 78o–7.

[93] 15 U.S.C. 78o–7(j).

[94] 15 U.S.C. 78o–7(a)(3).

[95] *Id.*

[96] *See, e.g.*, A.M. Best Letter.

[97] *See* letter dated March 8, 2007 from Majorie E. Gross (''Gross Letter'').

requirement to, and burden of, updating the Form. Consequently, the Commission has modified Items 6 and 7 accordingly. The information on how long an NRSRO has issued credit ratings in a particular class will assist users of credit ratings in assessing the NRSRO's level of experience.[98] Section 15E(a)(1)(C) of the Exchange Act also requires that the QIB certifications include a representation that the QIB has used the credit ratings of the applicant in the class of credit ratings for at least the three years immediately preceding the date of the application. The instructions provide that an applicant cannot tack on periods when a credit rating affiliate issued credit ratings in the particular class if the entity was not an affiliate during that time period. This provision is designed to avoid the submission of misleading information by providing that only credit ratings issued by, or on behalf of, the NRSRO are used in determining the start date.

Item 6 also elicits a brief description of how the credit rating agency issues its credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee. The Commission will use this information to review whether the applicant is in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee.[99] The Rating Agency Act does not define ''readily accessible.'' The information about how an applicant issues credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee also will inform the public about where and, if applicable, the cost to access an NRSRO's credit ratings.

Further, the Rating Agency Act does not define ''reasonable fee.'' In the proposing release, the Commission sought comment on whether it should define ''reasonable fee.'' In response, four commenters stated that the Commission should not in any way regulate the fees an NRSRO charges for its credit ratings.[100] The Commission has determined not to define ''reasonable fee'' at this time in order to gain experience on the issue. Item 6 is designed to assist the Commission in gaining this experience.

One commenter stated that Item 6, as proposed, does not elicit information that would be helpful in understanding the fees charged for obtaining or accessing credit ratings.[101] The Commission notes that, to the extent that several NRSROs indicate that they make their credit ratings available for free, the Commission will have assurance that regulatory users have ready access to NRSRO credit ratings. However, the Commission believes the form should elicit more information about fees so that the information will be disclosed to users of credit ratings. This will improve price transparency, which may lead to greater competition. Accordingly, the instructions for Item 6 and Item 7 now provide that an applicant that charges a fee for accessing its credit ratings must describe the fee or include a fee schedule in the form.

Finally, Item 6 requires the applicant to provide the QIB certifications mandated pursuant to Section 15E(a)(1)(B)(ix) of the Exchange Act.[102] Under this provision, an applicant must submit a minimum of ten QIB certifications. An NRSRO will not be required to make the QIB certifications publicly available pursuant to Section 15E(a)(3) of the Exchange Act [103] and Rule 17g–1(i) thereunder or update them after registration.[104] Sections 15E(a)(1)(C)(i), (ii), and (iii) further provide, respectively, that: (1) The certifying QIB must not be affiliated with the applicant; (2) the certification may address more than one of the categories of obligors identified in the definition of NRSRO; and (3) at least two of the certifications must address each category of obligor.[105] Section 15E(a)(1)(C)(iv) provides that the QIB must state in the certification that it meets the definition of a ''QIB'' in Section 3(a)(64) of the Exchange Act [106] and that the QIB has used the credit ratings of the applicant for at least three years immediately preceding the date of the application in the subject category or categories of obligors.[107] The Senate report (''Senate Report'') accompanying the Rating Agency Act explained that the term ''used'' was intended to mean the QIB ''seriously considered the ratings in some of [its] investment decisions.'' [108] The Senate Report further explained that ''a QIB whose analysts regularly read and consider [a credit rating agency's] ratings in the course of making investment decisions would have ''used'' them under the meaning of the bill.'' [109] The required representation for the QIB certification is that the QIB ''has seriously considered the credit ratings of [the credit rating agency] in the course of making some of its investment decisions for at least the three years immediately preceding the date of this certification, in the following classes of credit ratings.'' In addition, as a measure designed to ensure the impartiality of the QIB's representation, the QIB must certify that it has not received compensation for providing the certification.

The certification must be executed by a person duly authorized by the QIB to make the certification on behalf of the QIB. This is designed to ensure that the certification is that of the QIB and not an employee of the QIB who may have an interest (distinct from that of the QIB) in providing the certification to the applicant. The form of the certification now requires that the printed name and title of the person be provided under the signature. This will clarify the identity and level of responsibility of the person executing the certification.

The Commission did not receive any comments on the form of the QIB certification and is adopting it substantially as proposed with the two modifications described above.

Item 6 of proposed Form NRSRO also requires the applicant to indicate whether it is submitting the QIB certifications and, if so, how many certifications are being submitted or that the applicant is exempt from the requirement to provide the certifications. Under Section 15E(a)(1)(D) of the Exchange Act, a

[98] Because Item 7, discussed below, will not be filled out when the NRSRO applies for registration, it will remain blank for a period of time between the granting of an initial registration and the time when the NRSRO furnishes a new Form NRSRO either as an amendment or annual certification. Item 6, however, will have been filled out as part of the application for registration. This item requires the same information as Item 7. Therefore, users of credit ratings will have the access to the information through Item 6 until the NRSRO furnishes an annual certification. Thereafter, the information will be located in Item 7 and updated annually with each new annual certification.

[99] Section 3(a)(61)(A) of the Exchange Act (15 U.S.C. 78c(a)(61)(A)).

[100] *See* letter dated March 12, 2007 from Cate Long, Multiple Markets (''MM Letter''); letter dated March 12, 2007 from Lawrence J. White, Professor of Economics, Stern School of Business (''White Letter''); Letter dated March 12, 2007 from Alex J. Pollack, Resident Fellow, American Enterprise Institute (''AEI Letter''); Gross Letter.

[101] *See* Gross Letter.

[102] 15 U.S.C. 78o–7(a)(1)(B)(ix).

[103] 15 U.S.C. 78o–7(a)(3).

[104] An applicant can request that this information be kept confidential to the extent permitted by law. *See* 17 CFR 200.80 and 17 CFR 200.83.

[105] *See* 15 U.S.C. 78o–7(a)(1)(C)(i), (ii) and (iii), respectively.

[106] 15 U.S.C. 78c(a)(64).

[107] 15 U.S.C. 78o–7(a)(1)(C)(iv).

[108] *See Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 3850,* Credit Rating Agency Reform Act of 2006, S. Report No. 109–326, 109th Cong., 2d Sess. (Sept. 6, 2006) (''Senate Report''). The Senate Report further explained that a QIB whose employees subscribe to or regularly receive the ratings but do not read them or, if they read them, rarely or never consider them in making their investment decisions would not be deemed to have 'used' the ratings.''

[109] *Id* (emphasis added).

credit rating agency is not required to submit the QIB certifications if it was identified as an NRSRO in a Commission staff no-action letter issued before August 2, 2006.[110]

For these reasons, the Commission is adopting Item 6 with the modifications discussed above.

9. Item 7 (Classes of Credit Ratings Covered by Current Registration)

As adopted, Item 7 requires an NRSRO to provide information about the classes of credit ratings for which the NRSRO is currently registered, the approximate number of credit ratings issued in each class as of the previous calendar year end, and the date the NRSRO first issued credit ratings in that class on a continuous basis. The NRSRO also must provide information about how the NRSRO makes its credit ratings readily accessible. Item 7 has been modified from the proposed form to make the information provided in the item less subject to change, which will reduce the frequency of having to furnish updated information. Specifically, as discussed above, the number of years the NRSRO has issued credit ratings in a particular class is now indicated by having the NRSRO provide the date it first issued credit ratings in that class. As proposed, the NRSRO would have had to provide the number of years it had issued credit ratings in that class, which would constantly change with the advance of time. Also, the number of credit ratings issued in a particular class is now as of the end of the previous calendar year. Therefore, this information will change once a year and only be required to be updated on an annual basis. The instructions to the Form provide that this update can be made with the annual certification and within the 90-day time period for providing the annual certification.

10. Item 8 (Potential Statutory Disqualifications)

An applicant and NRSRO will be required to disclose, if applicable, if it or any person within its credit rating organization have been, or are, subject to certain legal judgments or orders, or regulatory findings. As explained in the proposing release, Section 15E(a)(2)(C)(ii)(II) of the Exchange Act[111] directs the Commission to deny a credit rating agency's application for registration as an NRSRO if the Commission finds that the applicant, if granted registration, would be subject to suspension or revocation of its registration under Section 15E(d) of the Exchange Act.[112] Section 15E(d) of the Exchange Act[113] provides that the Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of an NRSRO, if the Commission finds that the NRSRO or a person associated with the NRSRO has committed or omitted any act, or is subject to an order or finding enumerated in Sections 15(b)(4)(A), (D), (E), (G), or (H) of the Exchange Act,[114] has been convicted of any offense specified in Section 15(b)(4)(B) of the Exchange Act,[115] or is enjoined from any action, conduct, or practice specified in Section 15(b)(4)(C) of the Exchange Act.[116] The Commission also can take these actions if the NRSRO or a person associated with the NRSRO has been convicted of any crime punishable by imprisonment for 1 or more years that is not described in Section 15(b)(4)(B) of the Exchange Act[117] or a substantially equivalent crime in a foreign court of competent jurisdiction, or if a person associated with the NRSRO is subject to any order of the Commission barring or suspending the right of the person to be associated with an NRSRO.[118] Item 8 of Form NRSRO requires an applicant or NRSRO to answer whether the applicant or the NRSRO or any person within their credit rating organizations, is subject to these acts, convictions, or orders described in Section 15E(d) of the Exchange Act.[119]

If an applicant answers ''yes'' to a question, the credit rating agency is required to provide additional information on a Disclosure Reporting Page (DRP) NRSRO as set forth in the instructions for Form NRSRO. An NRSRO will not be required to make the disclosure reporting pages publicly available pursuant to Section 15E(a)(3) of the Exchange Act[120] and Rule 17g–1(i) thereunder.[121] If an applicant answers ''yes'' to a question in Item 8, the Commission will use the disclosure reporting pages to evaluate whether the applicant's registration could be granted in light of the disclosure. After registration, if an NRSRO answers ''yes'' to one of the questions, the Commission will use the disclosure reporting pages to evaluate pursuant to the process under Section 15E(d) of the Exchange Act whether it would be appropriate to issue an order censuring, placing limitations on the activities, functions, or operations of, suspending for a period not exceeding 12 months, or revoking the registration of the NRSRO.[122]

Two commenters stated that Item 8, as proposed, was overly broad because, in asking about any person ''associated'' with the applicant and NRSRO, it reached employees in areas of a large conglomerate that performed functions wholly unrelated to credit rating services.[123] The Commission notes that its authority under Sections 15E(a)(2)(C)(ii)(II)[124] and 15E(d)[125] of the Exchange Act can be triggered by legal judgments and orders, and regulatory findings involving persons ''associated'' with the applicant and NRSRO. In considering these comments, the Commission evaluated when a disclosure would be more likely to trigger Commission action. The Commission concluded that it would involve disclosures relating to the credit rating agency and the persons directly involved in providing or supporting credit rating services. Therefore, to lessen the burden on applicants and NRSROs, the Commission believes it is appropriate to narrow the scope of the disclosure requirement to ''persons within the credit rating agency,'' which the instructions define as the credit rating agency, any credit rating affiliates of the credit rating agency identified in Item 3, and any partner, officer, director, branch manager, or employee of the credit rating agency or credit rating affiliates (or any person occupying a similar status or performing similar functions).

One commenter requested that the Commission clarify that the disclosures in Item 8 do not include disclosures relating to accusations or arrests.[126] The Commission notes that the disclosures are triggered by the provisions of Section 15E(d) of the Exchange Act,[127] which refers to convictions (not arrests or accusations). A second commenter suggested that the disclosure item not include the name of the individual.[128] The Commission believes it has reduced this concern, in part, by narrowing the disclosure item to persons within the credit rating agency and by providing

[110] 15 U.S.C. 78o–7(a)(1)(D).

[111] 15 U.S.C. 78o–7(a)(2)(C)(ii)(II).

[112] 15 U.S.C. 78o–7(d).

[113] *Id.*

[114] 15 U.S.C. 78o(b)(4)(A), (D), (E), (G) and (H).

[115] 15 U.S.C. 78o(b)(4).

[116] 15 U.S.C. 78o(b)(4)(C).

[117] 15 U.S.C. 78o(b)(4)(B).

[118] 15 U.S.C. 78o–7(d).

[119] *Id.*

[120] 15 U.S.C. 78o–7(a)(3).

[121] An applicant can request that this information be kept confidential to the extent permitted by law. *See* 17 CFR 200.80 and 17 CFR 200.83.

[122] 15 U.S.C. 78o–7(d).

[123] *See* S&P Letter; Moody's Letter.

[124] 15 U.S.C. 78o–7(a)(2)(C)(ii)(II).

[125] 15 U.S.C. 78o–7(d).

[126] *See* R&I Letter.

[127] 15 U.S.C. 78o–7(d).

[128] *See* A.M. Best Letter.

that the disclosure reporting pages are not required to be made publicly available pursuant to Section 15E(a)(3) of the Exchange Act [129] and Rule 17g–1(i).[130] The Commission believes the disclosure of the name of a person providing or supporting credit ratings services will be important as these persons may seek to associate with another NRSRO if they are terminated from or leave the reporting NRSRO. The Commission also notes that the events triggering an Item 8 disclosure generally are matters of public record (*e.g.*, convictions, regulatory orders) and, consequently, there may be a reduced expectation of confidentiality.

Otherwise, Item 8 is being adopted substantially as proposed.

11. Exhibit 1 (Credit Ratings Performance Statistics)

Section 15E(a)(1)(B)(i) of the Exchange Act requires that an application for registration as an NRSRO contain credit ratings performance measurement statistics over short-term, mid-term, and long-term periods (as applicable).[131] An applicant and NRSRO will provide this information in Exhibit 1 to Form NRSRO. The Exchange Act does not otherwise define or identify the particular credit rating performance statistics to be provided with the application. Credit rating agencies typically generate statistical reports showing historical default and downgrade rates within each credit rating notch or grade.[132] These types of statistics are important indicators of the performance of a credit rating agency in terms of its ability to assess the creditworthiness of issuers and obligors and, consequently, will be useful to users of credit ratings in evaluating an NRSRO.

The instructions to Form NRSRO provide that an applicant and NRSRO must include in the Exhibit definitions of the credit ratings (*i.e.*, an explanation of each category and notch) and explanations of the performance measurement statistics, including the metrics used to derive the statistics. One commenter requested that the Commission clarify the instruction with respect to explaining ''the metrics used to derive the statistics.'' [133] The intent is that the NRSRO explain in general terms how it calculates the default and downgrade rates. The Commission believes that requiring this information is necessary or appropriate in the public interest or for the protection of investors because it will assist users of credit ratings in understanding how the measurements were derived and in making comparisons with the measurement statistics of other NRSROs.[134]

The definitions of the categories and notches will assist the Commission in assessing whether the NRSRO's credit ratings, as a practical matter, can be used for certain Commission rules. For example, paragraph(c)(2)(vi)(F) of Exchange Act Rule 15c3–1 specifies lower haircuts for debt securities that are rated in one of the ''four highest rating categories'' of at least two NRSROs.[135] This provision was designed based on the practice of many credit rating agencies to have at least eight categories for their debt securities with the top four commonly referred to as ''investment grade.'' If an NRSRO uses less than eight categories, the Commission will be required to evaluate whether, based on the NRSRO's definitions, securities included in the top four categories would be suitable for the lower haircuts specified in paragraph(c)(2)(vi)(F) of Rule 15c3–1.[136]

The Commission requested comment on whether the performance measurement statistics should use standardized inputs, time horizons, and metrics to allow for greater comparability. This request elicited numerous comments.[137] Three commenters supported the use of standardized measures because it would make it easier to compare NRSROs.[138] A number of commenters opposed the use of standardized measures for several reasons, including that such measures would be impractical because credit rating agencies use different methodologies to determine credit ratings and different definitions of default and that the use of such measures could interfere with the methodologies for determining credit ratings.[139] In light of the varying approaches cited in the comments, the Commission is not prepared to prescribe standard metrics at this time. The Commission intends to continue to consider this issue to determine the feasibility, as well as the potential benefits and limitations, of devising measurements that would allow reliable comparisons of performance between NRSROs. As adopted, the Exhibit requires NRSROs to describe how they derive their statistics in sufficient detail to allow users of credit ratings to understand the measures. This will provide users with some basis to compare different NRSROs even if the statistics are not derived from similar measures.

The Commission requested comment on whether other performance measurement statistics would be appropriate as an alternative, or in addition, to historical default and downgrade rates. For example, the Commission requested comment on whether Exhibit 1 should require measurement of the performance of a given credit rating by comparing or mapping it to the market value of the rated security or to extreme declines in the market value of the security after the rating. Although the Commission is not taking action in this regard at this time, the Commission intends to study these issues and consider possible future action.

For these reasons, Exhibit 1 to Form NRSRO and the instructions for the Exhibit are being adopted substantially as proposed.

12. Exhibit 2 (Procedures and Methodologies for Determining Credit Ratings)

Section 15E(a)(1)(B)(ii) of the Exchange Act requires that an application for registration as an NRSRO contain information regarding the procedures and methodologies used by the credit rating agency to determine credit ratings.[140] An applicant and NRSRO will provide this information in Exhibit 1 to Form NRSRO. The Exchange Act does not otherwise define

[129] 15 U.S.C. 78o–7(a)(3).

[130] An applicant can request that this information be kept confidential to the extent permitted by law. *See* 17 CFR 200.80 and 17 CFR 200.83.

[131] 15 U.S.C. 78o–7(a)(1)(B)(i).

[132] The credit rating categories of a credit rating agency generally are represented by symbols, numbers or other designations that are used to distinguish the creditworthiness of the obligors, securities and money market instruments the credit rating agency rates. For example, some credit rating agencies use symbols such as AAA, AA, A, BBB, BB, B, CCC, and CC to distinguish the creditworthiness of corporate debt securities. AAA would be the highest rating and CC would be the lowest rating above the default or regulatory supervision of the issuer.

[133] *See* DBRS Letter.

[134] Section 15E(a)(1)(B)(x) of the Exchange Act provides that the Commission can require additional information that it finds is necessary or appropriate in the public interest or for the protection of investors (15 U.S.C. 78o–7(a)(1)(B)(x)).

[135] 17 CFR 240.15c3–1(c)(2)(vi)(F).

[136] *Id.*

[137] *See* letter dated March 12, 2007 from Richard M. Whiting, Executive Director and General Counsel, Financial Services Roundtable (''FSR Letter''); letter dated March 12, 2007 from Herwig M. Langohr, Professor, INSEAD Business School, Patricia T. Langohr, Professor, ESSEC Business School (''Langohr Letter''); letter dated March 22, 2007 from George P. Miller, Executive Director, American Securitization Forum (''ASF Letter''); letter dated March 16, 2007 from Makoto Utsumi, President & CEO, Ratings & Investment Information (''JCR 2nd Letter''); ICI Letter; Gross Letter; R&I Letter; MM Letter; White Letter; DBRS Letter; A.M. Best Letter; S&P Letter; AEI Letter; Moody's Letter.

[138] *See* Gross Letter; ICI Letter; JCR 2nd Letter.

[139] *See*, *e.g.*, R&I Letter; A.M Best Letter; S&P Letter; Moody's Letter; ASF Letter.

[140] 15 U.S.C. 78o–7(a)(1)(B)(ii).

or identify the procedures and methodologies that must be provided under this section.[141] However, the definition of ''credit rating agency'' in Section 3(a)(61) of the Exchange Act provides that a ''credit rating agency'' is an entity that, among other things, ''employ[s] either a quantitative or qualitative model, or both, to determine credit ratings.'' [142]

Credit rating agencies may establish procedures and methodologies for determining credit ratings in the following areas: The determination of whether to initiate a credit rating; the use of public and non-public sources of information to perform credit rating analysis, including information and analysis provided by third-party vendors; the use of quantitative and qualitative models and metrics to determine credit ratings; the interaction with the management of a rated obligor or issuer of rated securities; the establishment of the structure and voting process of committees that review or approve credit ratings; the notification of rated obligors or issuers of rated securities about credit rating decisions and for appeals of final or pending credit rating decisions; the monitoring, reviewing, and updating of credit ratings; and the withdrawal, or suspension of the maintenance, of a credit rating.

The list identifies areas where a credit rating agency may establish procedures and methodologies for determining credit ratings. The applicability of certain areas to a particular credit rating agency will depend on whether it uses subjective qualitative analysis, purely quantitative models, or a combination of both.[143] Consequently, a credit rating agency might not establish a procedure or methodology in a given area if doing so would not be relevant to how the credit rating agency determines credit ratings.

In addition, credit rating agencies that issue ''unsolicited'' credit ratings may establish procedures and methodologies in the areas described above that are unique for such ratings. Credit rating agencies that use a subscription fee based business model may only issue unsolicited ratings because that business model does not rely on fees charged issuers, obligors, and underwriters to determine specific credit ratings (issuers, obligors, and underwriters, however, may subscribe to receive the credit ratings of such credit rating agencies). The procedures and methodologies these credit rating agencies employ, in some respects, may be unique to this business model.

Credit rating agencies that are paid by issuers, obligors, and underwriters to determine specific credit ratings sometimes also issue unsolicited credit ratings. This practice has led to concerns that unsolicited ratings may be used to coerce issuers and obligors into ultimately paying the credit rating agency to determine and maintain the credit rating. Consequently, credit rating agencies that rely on fees from issuers, obligors, and underwriters to determine specific credit ratings, but also issue unsolicited ratings, often establish procedures and methodologies for determining unsolicited credit ratings that are designed to address this concern and the fact that the issuer or obligor may not have participated in the determination of the credit rating (as is most often the case with a solicited credit rating).

The Commission believes that the information about any procedures and methodologies established in the areas described above, including any with respect to unsolicited credit ratings, will be useful to users of credit ratings. The information will provide them with an understanding of the nature of the credit rating agency (*i.e.*, a user of quantitative models, qualitative analysis, or a combination of both) and how the credit rating agency produces credit ratings. This will provide a basis for comparing NRSROs.

Several commenters stated that the Exhibit should require that an applicant and NRSRO describe its procedures and methodologies rather than submit and disclose each actual procedure and methodology.[144] These commenters pointed out that large credit rating agencies that issue multiple types of credit ratings generally have volumes of detailed procedures that credit analysts must follow in the course of determining a credit rating.[145] They noted that disclosing all this information would be burdensome and could be difficult for users of credit ratings to parse.[146] They also noted that some of the procedures and methodologies may involve the use of proprietary models.[147]

The Commission agrees with these commenters that disclosing all the procedures could be burdensome and could result in an overload of information that would be less helpful to users of credit ratings. Therefore, the Commission has modified the instructions to require that the Exhibit contain a description of the procedures and methodologies (not the submission and disclosure of each actual procedure and methodology). The instructions provide that the description must be sufficiently detailed to provide users of credit ratings with an understanding of the processes the applicant or NRSRO employs to determine credit ratings.

As discussed below, rather than have a credit rating agency submit its procedures and methodologies in Exhibit 2, the Commission is adopting a requirement in Rule 17g–2 that an NRSRO must document them internally. Moving this requirement from Exhibit 2 to the recordkeeping rule is designed to reduce the burden on NRSROs, while making these procedures and methodologies available to Commission examination staff. These records are important to the Commission's oversight. For example, Rule 17g–6 prohibits, among other things, an NRSRO from issuing or modifying or threatening to issue or modify a credit rating contrary to the NRSRO's established procedures and methodologies. The Commission's ability to enforce this prohibition will depend on the Commission staff being able to access an NRSRO's documented procedures and methodologies.[148]

Two commenters also suggested changes to the Commission's description of an ''unsolicited credit rating'' in the proposed instructions to Form NRSRO as being a credit rating that is not requested by the issuer or underwriter of the rated securities or the rated obligor.[149] The commenters noted that issuers and obligors may consent to the issuance and participate in the determination of a credit rating even if they did not specifically request that the credit rating be issued. As discussed below, the Commission has eliminated the prohibition in Rule 17g–6 relating to unsolicited credit ratings, in part, because of difficulties with defining the term. Therefore, the Commission has removed the definition from the instructions to Exhibit 2. The Commission wants to gain a better understanding through its examination function of how credit rating agencies define ''unsolicited credit ratings'' and

[141] *See* 15 U.S.C. 78a *et seq.*

[142] *See* particularly, Section 3(a)(61)(B) of the Exchange Act (15 U.S.C. 78c(a)(61)(B)).

[143] *See* Section 3(a)(61) of the Exchange Act defining the term ''credit rating agency'' (15 U.S.C. 78c(a)(61)).

[144] *See* White Letter; DBRS Letter; A.M. Best Letter; Fitch Letter; Moody's Letter.

[145] *See, e.g.*, DBRS Letter; A.M. Best Letter; Fitch Letter; Moody's Letter.

[146] *Id.*

[147] *Id.*

[148] *See* letter dated March 12, 2007 from James A. Kaitz, President & CEO, Association for Financial Professionals (''AFP Letter'') stating the importance of monitoring whether an NRSRO adheres to its stated procedures and methodologies for determining credit ratings.

[149] *See* A.M. Best Letter; Moody's Letter.

the practices they employ with respect to these ratings.

For these reasons, the Commission is adopting Exhibit 2 and the instructions for the Exhibit with the modifications described above.

13. Exhibit 3 (Procedures To Prevent the Misuse of Material Non-Public Information)

Section 15E(g)(1) of the Exchange Act [150] requires an NRSRO to establish, maintain, and enforce written policies and procedures to prevent the misuse of material, nonpublic information in violation of the Exchange Act.[151] Section 15E(g)(2) of the Exchange Act provides that the Commission shall adopt rules requiring an NRSRO to establish specific policies and procedures to prevent the misuse of material, nonpublic information.[152] As discussed below, Rule 17g–4 requires an NRSRO's policies and procedures established pursuant to Section 15E(g)(1) of the Exchange Act [153] to include certain specific types of procedures.

Section 15E(a)(1)(B)(iii) of the Exchange Act [154] requires that an application for registration as an NRSRO contain information regarding policies or procedures adopted and implemented by the credit rating agency to prevent the misuse of material, nonpublic information in violation of Exchange Act [155] provisions and rules. An applicant and NRSRO will provide this information in Exhibit 3 to Form NRSRO. Specifically, Exhibit 3 requires a copy of the policies and procedures to prevent the misuse of material, nonpublic information established pursuant to Section 15E(g) of the Exchange Act [156] and Rule 17g–4.

The Commission received two comments on this Exhibit, as proposed.[157] One commenter stated that the policies and procedures should not have to be made publicly available because they may contain proprietary information and disclosing them could hinder their effectiveness.[158] The Commission agrees that disclosing certain components of these policies and procedures could make it easier for persons to circumvent them. Therefore, the Commission has modified the instructions to provide that the applicant or NRSRO is not required to submit in the Exhibit any specific information in the policies and procedures that is proprietary or would diminish the effectiveness of the policies and procedures if such information is disclosed. The other commenter stated that the procedures should be disclosed on the NRSRO's Web site without further elaboration.[159] The Commission notes that Section 15E(a)(3) of the Exchange Act [160] and Rule 17g–1 thereunder require an NRSRO to make its Form NRSRO and Exhibits 1 through 9 publicly available by posting them on its Web site, or through another comparable, readily accessible means.

For these reasons, the Commission is adopting Exhibit 3 and the instructions for the Exhibit with the modifications described above.

14. Exhibit 4 (Organizational Information)

Section 15E(a)(1)(B)(iv) of the Exchange Act requires that an application for registration as an NRSRO contain information regarding the organizational structure of the applicant.[161] An applicant and NRSRO will provide this information in Exhibit 4 to Form NRSRO. The Exchange Act does not otherwise define or identify the specific type of organizational information that must be provided under Section 15E(a)(1)(B)(iv) of the Exchange Act.[162] Companies typically create, as applicable, an organizational chart showing ultimate and sub-holding companies, subsidiaries, and material affiliates; an organizational chart showing divisions, departments, and business units within the entity; and an organizational chart showing the management structure and senior management reporting lines within the entity. Users of credit ratings will benefit from this information and, consequently, the Commission proposed that it be provided in this Exhibit. One commenter disagreed that users of credit ratings would find the information helpful in assessing or understanding the NRSRO.[163] For the reasons discussed below, the Commission continues to believe these three charts will be valuable to users of credit ratings and the Commission.

The first required organizational chart will show the credit rating agency's ultimate and sub-holding companies, subsidiaries, and material affiliates, if applicable. This chart will reveal where potential conflicts of interest relating to the business activities of related companies might arise. Also, the fact that a credit rating agency has a holding company that potentially could provide financial support will be relevant to the Commission's evaluation of whether an applicant or NRSRO has adequate financial resources as required under the Exchange Act.[164] One commenter requested that the Commission define the term ''material affiliate.''[165] At present, the Commission believes it is more appropriate to rely on the judgment of the credit rating agency to define its material affiliates, given that the size and complexity of NRSROs could vary widely.

The second organizational chart will show the credit rating agency's divisions, departments, and business units, if applicable. This information will assist users of credit ratings and the Commission in understanding where potential conflicts of interest relating to ancillary business activities might arise.

The third organizational chart will show the credit rating agency's management structure and senior management reporting lines and include in the chart its designated compliance officer under Section 15E(j) of the Exchange Act.[166] The Commission will benefit from this chart as it will assist in evaluating whether an applicant and NRSRO has adequate managerial resources as required under the Exchange Act.[167] Users of credit ratings will be able to use this information to compare the managerial resources of different NRSROs.

Including the compliance officer in the chart will assist the Commission and users of credit ratings in understanding the degree of the compliance officer's independence from the business managers.[168] The compliance officer's reporting lines are relevant in assessing the integrity of the credit rating process of a particular NRSRO, since the officer is responsible for administering the credit rating agency's policies and procedures required by Sections 15E(g) and (h) of the Exchange Act [169] and for ensuring the NRSRO's compliance with the securities laws and rules and regulations thereunder.[170] In carrying

[150] 15 U.S.C. 78o–7(g)(1).

[151] 15 U.S.C. 78a *et seq.*

[152] 15 U.S.C. 78o–7(g)(2).

[153] 15 U.S.C. 78o–7(g)(1).

[154] 15 U.S.C. 78o–7(a)(1)(B)(iii).

[155] 15 U.S.C. 78a *et seq.*

[156] 15 U.S.C. 78o–7(g).

[157] *See* letter dated March 12, 2007 from Ayal Rosenthal (''Rosenthal Letter''); R&I Letter.

[158] *See* R&I Letter.

[159] *See* Rosenthal Letter.

[160] 15 U.S.C. 78o–7(a)(3).

[161] 15 U.S.C. 78o–7(a)(1)(B)(iv).

[162] *Id. See also,* 15 U.S.C. 78a *et seq.*

[163] *See* MM Letter.

[164] *See* Sections 15E(a)(2)(C) and 15E(d) of the Exchange Act (15 U.S.C. 78o–7(a)(2)(C) and (d)).

[165] *See* R&I Letter.

[166] 15 U.S.C. 78o–7(j).

[167] *See* Sections 15E(a)(2)(C) and 15E(d) of the Exchange Act (15 U.S.C. 78o–7(a)(2)(C) and (d)).

[168] *See* Section 15E(a)(1)(B)(x) of the Exchange Act (15 U.S.C. 78o–7(a)(1)(B)(x)).

[169] 15 U.S.C. 78o–7(g) and (h).

[170] Section 15E(j) of the Exchange Act (15 U.S.C. 78o–7(j)).

out these responsibilities, a compliance officer will be required to review activities overseen by senior business managers. The ability of the compliance officer to objectively review an area can be impacted by whether the officer reported to the senior manager responsible for the area. Thus, the relative independence of the compliance officer will be relevant in assessing the NRSRO's ability to ensure compliance with its policies and procedures.

For these reasons, the Commission is adopting Exhibit 4 and the instructions for the Exhibit substantially as proposed.

15. Exhibit 5 (Code of Ethics)

Section 15E(a)(1)(B)(v) of the Exchange Act requires that an application for registration as an NRSRO disclose whether the applicant has a code of ethics in effect or an explanation of why the applicant has not established a code of ethics.[171] Exhibit 5 of Form NRSRO elicits this information by requiring an applicant and NRSRO to attach a copy of any established code of ethics or an explanation of why it does not have a code of ethics. The Commission believes the requirement to include a copy of any established code of ethics in the Exhibit is necessary or appropriate in the public interest or for the protection of investors. A statement that an NRSRO has a code of ethics but no further disclosure would not be particularly useful to users of credit ratings. They would not be able to review the code of ethics and use it as a means of comparing different NRSROs.

The Exchange Act does not otherwise define or identify the ''code of ethics'' that should be provided under Section 15E(a)(1)(B)(v).[172] The Commission believes each credit rating agency must have the flexibility to establish a code of ethics appropriate for its business model and organizational structure and, consequently, the Exhibit does not prescribe any specific elements that must be in the code of ethics, if any, furnished in this Exhibit.

The Commission received several comments on this Exhibit.[173] Most addressed whether the Exhibit also should require the credit rating agency to disclose whether it complies with international principles and codes of conduct related to credit rating agencies.[174] One commenter suggested that the Exhibit not refer to a code of ''ethics'' but rather to a code of ''conduct.''[175] Another commenter requested that the Exhibit not require the credit rating agency to ''certify'' that it is complying with international principles and codes of conduct because some principles permit an entity to comply or explain.

The Commission reiterates that Exhibit 5 does not prescribe any requirements that must be in an NRSRO's code of ethics and that Section 15E(a)(1)(B)(v) of the Exchange Act does not require an NRSRO to have a code of ethics.[176] An applicant or NRSRO can submit a statement of why it does not have a code of ethics.[177] The Commission believes that the Exhibit should not require the inclusion of any particular type of code of conduct. It could be the case that the code of ethics provided by an applicant or NRSRO is part of a broader code of conduct. For the foregoing reasons, the Commission is adopting Exhibit 5 substantially as proposed.

16. Exhibit 6 (Conflicts of Interest)

Section 15E(a)(1)(B)(vi) of the Exchange Act requires that an application for registration as an NRSRO contain information regarding any conflict of interest relating to the issuance of credit ratings by the applicant and NRSRO.[178] The Exchange Act does not otherwise define or identify the types of conflicts of interest that should be disclosed under Section 15E(a)(1)(B)(vi) of the Exchange Act.[179] Exhibit 6, as proposed, would have required an applicant and NRSRO to describe in general terms each type of conflict that arises, or may arise, from its business model and credit rating activities. Thus, if an NRSRO receives payment from issuers to rate their securities, the NRSRO would have been required to disclose that fact. It would not have had to make a disclosure each time it received payment from an issuer. The purpose of the proposed disclosure was to alert users of credit ratings to the NRSRO's business model (subscriber fee-based, issuer fee-based, or a combination of both), and to potential conflicts that arise from the business model.

The Commission continues to believe that disclosing the types of conflicts that arise from an NRSRO's business model will assist the Commission in evaluating whether an applicant has sufficient financial and managerial resources to comply with the procedures for managing conflicts of interest required under Section 15E(h) of the Exchange Act,[180] given the types of conflicts of interest identified by the applicant.[181] The information also will be useful to users of credit ratings in assessing an NRSRO by, for example, comparing the types of conflicts disclosed by the entity in Exhibit 6 with the procedures for managing conflicts of interest disclosed by the entity in Exhibit 7.

Exhibit 6 of Form NRSRO, as adopted, requires an applicant and NRSRO to provide a list describing in general terms the types of conflicts of interest that arise from its business activities. The instructions to the Exhibit have been modified to include a list of 10 different generic conflicts of interest that may apply to a credit rating agency based on its business model and activities. These conflicts were included in the proposed instructions as examples of conflicts. These are the types of conflicts that generally arise from the business of issuing credit ratings depending on the business model of the credit rating agency. The instructions further provide that the credit rating agency can use the descriptions provided in the instructions to identify an applicable conflict of interest and is not required to provide any further information. Thus, the credit rating agency can review each item on the list and determine whether it describes an applicable conflict. This modification is intended to make it simpler for the credit rating agency to create the Exhibit since it may rely on the language in the instructions to identify a conflict. A credit rating agency can choose to provide its own description of the conflict or further explanation to one of the descriptions in the instructions.

Several commenters raised concerns with the Commission's identification as a potential conflict the fact that a subscriber may use the entity's credit ratings for regulatory purposes.[182] They

[171] 15 U.S.C. 78o–7(a)(1)(B)(v).

[172] *Id.*

[173] *See* letter dated March 12, 2007 from John Grout, Policy and Technical Director, The Association of Corporate Treasurers (''AST Letter''); Gross Letter; DBRS Letter; S&P Letter; Moody's Letter; Langohr Letter; JCR 2nd Letter.

[174] A number of these commenters endorsed a requirement that the credit rating agency disclose whether it has adopted a code of conduct consistent with the principles contained in the report: *Statement of Principles Regarding the Activities of Credit Rating Agencies*, Technical Committee, International Organization of Securities Commissions (''IOSCO'') (September 25, 2003). *See also Code of Conduct Fundamentals for Credit Rating Agencies*, Technical Committee of IOSCO (December 2004).

[175] *See* Moody's Letter.

[176] 15 U.S.C. 78o–7(a)(1)(B)(v).

[177] *Id.*

[178] 15 U.S.C. 78o–7(a)(1)(B)(vi).

[179] *Id, see also* 15 U.S.C. 78a *et seq.*

[180] 15 U.S.C. 78o–7(h).

[181] *See* Section 15E(a)(2)(C) Exchange Act (15 U.S.C. 78o–7(a)(2)(C)).

[182] *See, e.g.*, DBRS Letter; S&P Letter.

argued that it would be impractical to determine how subscribers might be using their credit ratings.[183] The Commission did not intend to require NRSROs to actively monitor how their subscribers were using their credit ratings. Rather, the intent is to require NRSROs to disclose that subscribers, while they do not pay to have a credit rating issued, may have an interest in a specific credit rating. Therefore, the fact that they compensate the NRSRO could give rise to a conflict of interest. The instructions now describe the conflict as the fact that subscribers *may* use the credit ratings for regulatory purposes. This means that any credit rating agency that charges subscribers to access its credit ratings will be required to identify this conflict. The credit rating agency is not required to determine whether, or how, the subscribers are using the credit ratings to comply with statutes and regulations. The purpose of the disclosure is to alert users of credit ratings to the fact that the NRSRO's business model includes charging subscribers to access its credit ratings and that a subscriber may have an interest in a particular credit rating. For similar reasons, the Commission eliminated a provision in the instructions requiring the identification of associated persons that use credit ratings for regulatory purposes as this would have required an applicant and NRSRO to monitor how another legal entity was using its credit ratings.

A commenter noted that subscribers who manage investment portfolios also may have an interest in a particular credit rating.[184] For example, such a subscriber may be limited to investing in debt securities that have investment grade credit ratings and, consequently, would be required to sell, perhaps at a loss, a debt security that is downgraded below investment grade. The Commission believes that, similar to regulatory users, this type of subscriber could raise a potential conflict of interest. Therefore, this type of conflict is specifically identified in the instructions to the Exhibit.

The instructions to the Exhibit, as proposed, also required an NRSRO to identify a person associated with the NRSRO that underwrites securities or money market instruments that are subject to a credit rating of the NRSRO. This type of conflict is identified in Section 15E(h)(2)(D) of the Exchange Act.[185] The concerns raised by commenters with respect to monitoring how subscribers use their credit ratings also apply in this context. For example, the provision, as proposed, could be interpreted to require an NRSRO to monitor whether any person associated with the NRSRO is an ''underwriter'' as that term is defined in Section 2(a)(11) of the Securities Act of 1933.[186] The Commission believes this could impose a very difficult compliance standard in that it would involve continuous monitoring of the securities trading activities of associated persons and legal judgments as to whether they were acting as ''underwriters'' at any given moment.

At the same time, the Commission believes that where there is a potential affiliation between an NRSRO and a securities underwriter that it is necessary or appropriate in the public interest or for the protection of investors to require it to be disclosed in this Exhibit. Specifically, an affiliation between an NRSRO and a broker or dealer that is in the business of underwriting securities would raise concerns that the NRSRO might be influenced by the affiliation to issue favorable credit ratings for these securities. The Commission further believes that disclosing this type of affiliation does not present the concerns discussed above since most persons associated with an NRSRO likely are not broker-dealers in the business of underwriting securities. Therefore, the NRSRO should be able to identify those associated persons. Further, the requirement to identify these persons is based on being affiliated with such an underwriter that *may* underwrite securities rated by the NRSRO. Thus, the NRSRO will not need to actively monitor whether it currently has rated such securities and update the Exhibit each time this changes. Consequently, the requirement to identify persons associated with the NRSRO that underwrite securities rated by the NRSRO has been narrowed to a requirement to identify any person associated with the NRSRO that is a broker or dealer in the business of underwriting securities or money market instruments.

Finally, the Commission notes that the Exhibit contains a catchall provision requiring the disclosure of any other material conflict of interest. Consequently, the additional conflict added to the instructions is expected to reduce the potential conflicts that must be disclosed under the catchall. With respect to the catchall, the instructions note that a ''material'' type of conflict will include one that the NRSRO has established specific policies and procedures to address.

For these reasons, the Commission is adopting Exhibit 6 and the instructions for the Exhibit with the modifications described above.

17. Exhibit 7 (Procedures To Manage Conflicts)

An applicant or NRSRO will be required to furnish in Exhibit 7 a copy of the written policies and procedures it establishes, maintains, and enforces to address and manage conflicts of interest pursuant to Section 15E(h) of the Exchange Act.[187] Requiring inclusion of these policies and procedures in the Form is necessary or appropriate in the public interest or for the protection of investors.[188] First, their disclosure will assist the Commission in monitoring whether an NRSRO is complying with Section 15E(h) of the Exchange Act.[189] Second, their disclosure will assist the Commission in evaluating whether an applicant or NRSRO has adequate financial and managerial resources to materially comply with Section 15E(h) of the Exchange Act.[190] Third, their disclosure will allow users of credit ratings to compare an NRSRO's policies and procedures for managing conflicts of interest with the types of conflicts disclosed in Exhibit 7.

One commenter stated that these policies and procedures should not have to be made publicly available because they may contain proprietary information and disclosing them could hinder their effectiveness.[191] As with the Exhibit 3 policies and procedures, the Commission has modified the instructions for this Exhibit to provide that the applicant or NRSRO is not required to submit in the Exhibit any specific information in the policies and procedures that is proprietary or would diminish the effectiveness of the policies and procedures if such information were disclosed.

For these reasons, the Commission is adopting Exhibit 7 and the instructions for the Exhibit with the modification described above.

18. Exhibit 8 (Credit Analyst Information)

Exhibit 8, as proposed, would have required an applicant and NRSRO to provide certain background information (*e.g.*, employment history and education) with respect to each credit analyst and credit analyst supervisor.

[183] *Id.*

[184] *See* DBRS Letter.

[185] 15 U.S.C. 78o–7(h)(2)(D).

[186] 15 U.S.C. 77b(a)(11).

[187] 15 U.S.C. 78o–7(h).

[188] *See* Section 15E(a)(1)(B)(x) of the Exchange Act (15 U.S.C. 78o–7(a)(1)(B)(x)).

[189] 15 U.S.C. 78o–7(h).

[190] *Id.*

[191] *See* R&I Letter.

Consistent with its reasons for proposing this request, the Commission believes that the ability of a credit rating agency to assess the creditworthiness of an issuer and obligor depends on the competence of the personnel responsible for determining the entity's credit ratings. Further, the Commission believes that information about the responsibilities, experience, and employment history of the credit analysts and supervisors is necessary or appropriate in the public interest or for the protection of investors. The information will assist users of credit ratings in assessing the competence of an NRSRO's credit analysts and, thereby, provide a means for users to compare NRSROs. This information also will assist the Commission in evaluating whether the applicant has adequate managerial resources to consistently produce credit ratings with integrity and to materially comply with its procedures and methodologies.[192]

The Commission received numerous comments on Exhibit 8 stating that the requirement to provide information on each credit analyst and credit analyst supervisor was unduly burdensome and unnecessary.[193] Several commenters suggested, as an alternative, that the Exhibit require general information about the education, qualifications, and number of the credit analysts and their supervisors.[194] After considering the comments and the potential burden associated with the proposed requirement, the Commission has modified the Exhibit to only require aggregate information about these employees. Consequently, the Exhibit, as adopted, requires the following information:

- The total number of credit analysts.
- The total number of credit analyst supervisors.
- A general description of the minimum required qualifications of the credit analysts, including education level and work experience (if applicable, distinguish between junior, mid, and senior level credit analysts).
- A general description of the minimum required qualifications of the credit analyst supervisors, including education level and work experience.

The information about the total number of credit analysts and their supervisors will provide the Commission and users of credit ratings with an understanding of the human resources the credit rating agency devotes to determining credit ratings. This will assist the Commission in assessing the managerial resources of an applicant and NRSRO. The information about the qualifications of the credit analysts and their supervisors will be useful to users of credit ratings in assessing the competency of an NRSRO. The Commission believes this modification strikes an appropriate balance between reducing burden and requiring necessary information. Nonetheless, the Commission intends to monitor whether this aggregate approach to the credit analyst information is sufficient to apprise users of credit ratings of the qualifications of a given NRSRO's credit analysts.

For these reasons, the Commission is adopting Exhibit 8 and the instructions for the Exhibit with the modifications described above.

19. Exhibit 9 (Designated Compliance Officer)

As adopted, Exhibit 9 requires an applicant and NRSRO to provide certain background information on the entity's designated compliance officer. Section 15E(j) of the Exchange Act requires every NRSRO to designate an individual responsible for administering the policies and procedures of the credit rating agency to prevent the misuse of nonpublic information, to manage conflicts of interest, and to ensure compliance with the securities laws and the rules and regulations under those laws.[195] The ability of the compliance officer to carry out these statutorily mandated responsibilities will depend, in part, on the officer's experience and qualifications.

The Commission continues to believe that requiring information about the experience and employment history of the designated compliance officer is necessary or appropriate in the public interest or for the protection of investors. It will assist the Commission in evaluating whether the applicant has adequate managerial resources to consistently produce credit ratings with integrity and to materially comply with its procedures and methodologies.[196] It also will be useful to users of credit ratings because it would provide information regarding the resources an NRSRO devotes to ensuring, among other things, that credit ratings are determined in accordance with the procedures and methodologies the NRSRO makes public in Exhibit 2.

The Exhibit, as proposed, also required information about the compliance personnel responsible for assisting the compliance officer. Several commenters objected to this aspect of the Exhibit as being unduly burdensome, unnecessary, and intrusive.[197] After considering the comments and the potential burden associated with the proposed requirement, the Commission has modified the Exhibit to eliminate the requirement to provide information about the persons that assist the compliance officer. As with the modifications to Exhibit 8, the Commission believes this modification to Exhibit 9 strikes an appropriate balance between reducing burden and requiring necessary information. Nonetheless, the Commission intends to monitor whether information about the designated compliance officer alone is sufficient to apprise users of credit ratings of how this statutorily required compliance function is being addressed by a given NRSRO.

For these reasons, the Commission is adopting Exhibit 9 and the instructions for the Exhibit with the modifications described above.

20. Exhibit 10 (List of Large Users of Credit Rating Services)

Section 15E(a)(1)(B)(viii) of the Exchange Act requires that an application for registration as an NRSRO include, on a confidential basis,[198] a list of the 20 largest issuers and subscribers that use the credit rating services provided by the credit rating agency by amount of net revenue received by the credit rating agency in the fiscal year immediately preceding the date of submission of the application.[199] This information will be elicited in Exhibit 10 to Form NRSRO. An NRSRO will not be required to make this information publicly available pursuant to Section 15E(a)(3) of the Exchange Act[200] and Rule 17g–1(i) thereunder or update the Exhibit after registration.[201] An NRSRO will be required to update this information in an unaudited financial report that must be furnished to the Commission pursuant to Rule 17g–3.

[192] *See* Sections 15E(a)(2)(C) and (d) of the Exchange Act (15 U.S.C. 78o–7(a)(2)(C) and (d)).

[193] *See* letter dated May 3, 2007 from Barron H. Putnam, Ph.D, Owner and Advisor, LACE Financial Corporation (''LACE Letter''); JCR Letter; R&I Letter; DBRS Letter; A.M. Best Letter; Fitch Letter; S&P Letter; AEI Letter; Moody's Letter.

[194] *See, e.g.*, DBRS Letter; A.M. Best Letter; Fitch Letter; S&P Letter; Moody's Letter.

[195] 15 U.S.C. 78o–7(j).

[196] *See* Sections 15E(a)(2)(C) and (d) of the Exchange Act (15 U.S.C. 78o–7(a)(2)(C) and (d)).

[197] *See, e.g.*, R&I Letter; DBRS Letter; A.M. Best Letter; Fitch Letter; S&P Letter; Moody's Letter.

[198] An applicant can request that the Commission keep this information confidential to the extent permitted by law. *See* 17 CFR 200.80 and 17 CFR 200.83.

[199] 15 U.S.C. 78o–7(a)(1)(B)(viii).

[200] 15 U.S.C. 78o–7(a)(3).

[201] An applicant can request that this information be kept confidential to the extent permitted by law. *See* 17 CFR 200.80 and 17 CFR 200.83.

Exhibit 10 also requires that an applicant disclose in the list large obligors (*i.e.*, persons who are rated as an entity as opposed to having their securities rated) and underwriters if they are determined to have provided at least as much net revenue as the 20th largest issuer or subscriber. Consequently, a credit rating agency will be required to identify the 20 largest issuers and subscribers as required by Section 15E(a)(1)(B)(viii) of the Exchange Act [202] and include in the list any obligor and underwriter that meets the above criteria.

The Commission believes that including large obligors and underwriters in the list of the 20 largest issuers and subscribers is necessary or appropriate in the public interest or for the protection of investors. The information will help identify persons that could potentially have undue influence on an NRSRO given the amount of revenue the person provides the NRSRO. Obligors and securities underwriters may have as much of an interest in potentially influencing a credit rating as issuers and subscribers. One commenter suggested that the list of 20 large clients be determined from the pool of issuers, subscribers, obligors, *and* underwriters, rather than from only issuers and subscribers, with obligors or underwriters being added only to the extent they meet the above criteria.[203] In this case, the list would never exceed 20 persons. The Commission notes, however, that the statute clearly refers to the 20 largest ''issuers and subscribers'' and not to obligors or underwriters.[204] Therefore, this provision of the Exhibit is being adopted as proposed.

Section 15E(a)(1)(B)(viii) of the Exchange Act limits the persons required to be included in the list to users of the ''credit rating services'' of the applicant and NRSRO.[205] The Exchange Act [206] does not define the term ''credit rating services.'' The Commission proposed to interpret this term to mean any of the following: Rating an obligor (regardless of whether the obligor or any other person paid for the credit rating); rating an issuer's securities or money market instruments (regardless of whether the issuer, underwriter, or any other person paid for the credit rating); and providing credit ratings to a subscriber. The intent of this proposed interpretation is to include—along with persons that pay for credit ratings and subscriptions—persons that are rated, or whose securities or money market instruments are rated, but that did not pay for the credit rating. Even though these persons may not have paid for the credit rating, they potentially could have undue influence on the credit rating agency if they provide substantial net revenue for other services or products.

One commenter suggested expanding the definition to include providing credit ratings data and analysis to subscribers.[207] The Commission agrees that the meaning of ''subscribers'' should include persons who pay for credit ratings data and the analysis behind credit ratings because it may be difficult to separate these subscribers from other subscribers. Additionally, the Commission notes that credit rating agencies that make their credit ratings publicly available for free may offer subscriptions to receive feeds of the credit ratings or to receive more reports detailing the analysis behind the credit ratings. Consequently, the Commission is interpreting the term ''credit rating services'' to mean any of the following: Rating an obligor (regardless of whether the obligor or any other person paid for the credit rating); rating an issuer's securities or money market instruments (regardless of whether the issuer, underwriter, or any other person paid for the credit rating); and providing credit ratings, *credit ratings data, or credit ratings analysis* to a subscriber.

Section 15E(a)(1)(B)(viii) of the Exchange Act provides that the determination of the 20 largest issuers and subscribers is to be based on ''net revenue'' received from the issuer or subscriber.[208] The Exchange Act [209] does not define the term ''net revenue.'' The Commission proposed to interpret the term ''net revenue'' for the purposes of Section 15E(a)(1)(B)(viii) of the Exchange Act [210] to mean all fees, sales proceeds, commissions, and other revenue received by the applicant and its affiliates for any type of service or product, regardless of whether related to credit ratings, and net of any fees, sales proceeds, rebates, commissions, and other monies paid to the customer by the credit rating agency and its affiliates.

The Commission received several comments suggesting that this interpretation be narrowed in certain ways to make it more practical to employ in determining the large users of a credit rating agency's services.[211] Commenters stated that tracking revenues received by affiliates of the credit rating agency would be difficult.[212] Several commenters also stated that payables used to determine the ''net revenue'' should not include, for example, monies paid to vendors for ordinary course goods and services such as utility bills.[213] A commenter also sought clarification on how to realize revenues (*e.g.*, cash receipts, accrued receivables) for purposes of this Exhibit.

The Commission agrees with these commenters that the proposed definition of ''net revenues'' created some practical difficulties in determining the list required in Exhibit 10. Therefore, the Commission is refining the interpretation to make the calculation of ''net revenues'' easier to compute but also more focused. Specifically, the Commission interprets ''net revenues'' to mean revenue earned by the applicant or NRSRO for any type of service or product, regardless of whether related to credit rating services, and net of any rebates and allowances paid or owed to the person by the applicant or NRSRO. This definition excludes revenues received by affiliates that are not part of the credit rating organization. Also the intent in describing the netting payables as ''rebates or allowances'' is to limit them to items that directly reduce a payable on the revenue side and to exclude unrelated payables (*e.g.*, payables for utility bills). Finally, by using the term ''revenue earned'' the Commission intends that the applicant and NRSRO apply its standard accounting convention for recognizing revenue. The Commission is incorporating these interpretations into the instructions for Exhibit 10 and, as discussed below, Rule 17g–3.

The Commission notes that one commenter stated that the Exhibit requires public disclosure and that such disclosure is unnecessary because credit rating agencies establish barriers between credit analysts and the business units.[214] In response, the Commission notes that, as discussed above, an NRSRO is not required to make this information publicly available under Rule 17g–1(i). The information is intended to be used by the Commission to identify persons that could potentially exert undue influence on an NRSRO. The Commission further notes

[202] *Id.*

[203] *See* R&I Letter.

[204] *See* 15 U.S.C. 78o–7(a)(1)(B)(viii).

[205] *Id.*

[206] 15 U.S.C. 78a *et seq.*

[207] *See* DBRS Letter.

[208] 15 U.S.C. 78o–7(a)(1)(B)(viii).

[209] 15 U.S.C. 78a *et seq.*

[210] 15 U.S.C. 78o–7(a)(1)(B)(viii).

[211] *See* Gross Letter; Fitch Letter; S&P Letter; Moody's Letter.

[212] *See*, *e.g.*, Fitch Letter; S&P Letter; Moody's Letter.

[213] *See*, *e.g.*, Gross Letter; Moody's Letter.

[214] *See* FSR Letter.

that Congress specifically prescribed that an applicant and NRSRO provide the information with respect to the 20 largest issuers and subscribers in terms of net revenues.[215]

For these reasons, the Commission is adopting Exhibit 10 and the instructions for the Exhibit with the modifications described above.

21. Exhibit 11 (Audited Financial Statements)

As adopted, Exhibit 11 requires an applicant to furnish audited financial statements for the past three fiscal or calendar years immediately preceding the date of the application. An NRSRO will not be required to make this information publicly available pursuant to Section 15E(a)(3) of the Exchange Act[216] and Rule 17g–1(i) thereunder or update the Exhibit after registration.[217] An NRSRO will be required to provide audited financial statements to the Commission annually under Rule 17g–3.

The Commission continues to believe this financial information is necessary or appropriate in the public interest or for the protection of investors because it will assist the Commission in making the finding required by Section 15E(a)(2)(C) of the Exchange Act.[218] This section directs the Commission to grant a credit rating agency's application for registration as an NRSRO unless, among other things, the Commission finds that the applicant does not have adequate financial and managerial resources to consistently issue ratings with integrity and to materially comply with its procedures and methodologies disclosed pursuant to Section 15E(1)(B) of the Exchange Act and established pursuant to the Sections 15E(g), (h), (i) and (j) of the Exchange Act.[219] The financial statements will provide the Commission with information as to the applicant's net worth and income, which will assist the Commission in determining whether the applicant has sufficient financial resources. Financial statements for three years will assist the Commission in reviewing whether the applicant has been in the business of issuing credit ratings for the three years immediately preceding the date of its application for registration.[220] The information also will alert the Commission to a significant downward trend in the applicant's financial condition, which could be relevant to whether it has adequate financial resources.

The requirement that the financial statements be audited will provide the Commission with independent verification of the information in the statements. However, the Commission anticipates that some applicants may not have been audited in the past. Consequently, the instructions to the Exhibit provide that in this case the applicant may provide an audited financial statement for the fiscal year immediately preceding the date of the application. The prior years can be covered by unaudited financial statements. The instructions also provide that the applicant must attach a statement by a duly authorized person that the unaudited financial statements present fairly, in all material respects, the financial condition, results of operations, and the cash flows of the applicant. This will provide a level of assurance that the information in the financial statements has been reviewed and verified by the applicant.

Finally, the Commission anticipates that some applicants will be subsidiaries of holding companies. In this case, the applicant may provide audited consolidated financial statements of the parent company. Consolidated financial statements will provide information on the financial strength of the credit rating agency's parent. The parent is in a position to support the credit rating agency and, consequently, its financial condition may be indicative of the financial resources of the credit rating agency. Further, the information on revenues elicited in Exhibit 12 will augment the financial statements by providing information specific to the credit rating agency.

Several commenters sought clarification on whether the financial statements provided in Exhibit 11 must be prepared in accordance with Regulation S–X.[221] The Commission's intent with respect to Exhibit 11 is that applicants, to the extent possible, will be able to provide financial statements that have already been prepared for other reasons.

Two commenters also requested that the proposed rule be modified to permit an NRSRO to furnish a tax return prepared by an accountant in lieu of audited financial statements.[222] The Commission believes a tax return will not provide sufficient detail about an applicant's financial condition. For example, it would not provide the information that can be derived from a balance sheet, an income statement and statement of cash flows, and a statement of changes in ownership equity. Moreover, as indicated above, the Commission believes it is important to have an auditor provide independent verification that all this information is presented fairly, in all material respects.

For these reasons, the Commission is adopting Exhibit 11 and the instructions for the Exhibit with the modifications described above.

22. Exhibit 12 (Revenues)

As adopted, Exhibit 12 requires an applicant to provide information as to the amount of revenue generated from various credit rating services and a separate computation of total revenue from all other services. The instructions provide that this information be for the most recently completed fiscal or calendar year and is not required to be audited. An NRSRO will not be required to make this information publicly available pursuant to Section 15E(a)(3) of the Exchange Act[223] and Rule 17g–1(i) thereunder or update the Exhibit after registration.[224] An NRSRO will be required to update this information in an unaudited financial report furnished to the Commission under Rule 17g–3.

Two commenters stated that the Exhibit should be eliminated because it was unnecessary given the submission of financial statements in Exhibit 11.[225] The Commission continues to believe that this information is necessary or appropriate in the public interest or for the protection of investors. It will assist the Commission in making the finding with respect to adequate financial resources required by Section 15E(a)(2)(C) of the Exchange Act[226] by providing detail as to the revenues generated by different types of credit rating services. Financial statements alone may not separate out or itemize revenues earned from credit rating services as opposed to other services. For example, an applicant that has earned less revenue from credit rating services than its total credit analyst compensation may not be able to

[215] 15 U.S.C. 78o–7(a)(1)(B)(viii).

[216] 15 U.S.C. 78o–7(a)(3).

[217] An applicant can request that this information be kept confidential to the extent permitted by law. *See* 17 CFR 200.80 and 17 CFR 200.83.

[218] *See* 15 U.S.C. 78o–7(a)(2)(C).

[219] *See* 15 U.S.C. 78o–7(a)(2)(C)(ii)(I).

[220] An applicant must have been in the business of issuing credit ratings for the three years preceding the application to be eligible for registration with the Commission as an NRSRO. *See* Section 3(a)(62)(A) of the Exchange Act (15 U.S.C. 78c(a)(62)(A)).

[221] *See* DBRS Letter; Fitch Letter; Moody's Letter.

[222] *See* Letter dated March 12, 2007 from Sean Egan, President, Egan-Jones Ratings Company (''EJR Letter''); LACE Letter.

[223] 15 U.S.C. 78o–7(a)(3).

[224] An applicant can request that this information be kept confidential to the extent permitted by law. *See* 17 CFR 200.80 and 17 CFR 200.83.

[225] *See* S&P Letter; AEI Letter.

[226] *See* 15 U.S.C. 78o–7(a)(2)(C).

continue to support this business line at levels consistent with the statutory mandate.

One commenter stated that the determination of the revenue amounts should be made using a ''net revenue'' definition that permits flexibility in terms of how revenue is recognized.[227] As with Exhibit 10 and Rule 17g–3, the Commission intends that the credit rating agency apply its standard accounting convention for recognizing revenue as this will make revenue calculations consistent across the various financial reports required in Form NRSRO and Rule 17g–3.

Another commenter, with respect to Rule 17g–3, requested the elimination of a requirement to separately report revenues from determining private credit ratings (*i.e.*, credit ratings that are not made readily accessible to the public).[228] The commenter stated that it would be difficult to separate private ratings revenue from public ratings revenue. In an effort to reduce burden, the Commission has eliminated the requirement to separately itemize revenue from private ratings. The private ratings revenue must be included in the revenue item for determining or maintaining credit ratings.

Two commenters disagreed on the information that should be included in the revenue item relating to subscribers.[229] One commenter stated that the item should include revenue from subscribers to an applicant's credit analysis in addition to credit ratings subscribers.[230] The other commenter stated that the item should only apply to credit ratings subscribers.[231] The Commission intends the Exhibit to include both types of subscribers. The Commission believes separating out revenues from these two types of subscribers could be difficult in that some credit rating agencies may offer subscriptions that include access to credit ratings and credit analysis. Furthermore, some credit rating agencies make their credit ratings available for free but charge subscribers for credit ratings data and credit analysis. The Commission believes there is no reason to distinguish between a subscriber to credit ratings and a subscriber to credit ratings data and analysis in this context.

For these reasons, the Commission is adopting Exhibit 12 and the instructions for the Exhibit with the modifications described above.

23. Exhibit 13 (Analyst Compensation)

As adopted, Exhibit 13 will require an applicant to disclose to the Commission the amount of total aggregate annual compensation paid to its credit analysts and the median compensation. The instructions provide that the information must be for the most recently completed fiscal or calendar year and will not have to be audited. An NRSRO will not be required to make this information publicly available pursuant to Section 15E(a)(3) of the Exchange Act[232] and Rule 17g–1(i) thereunder or update the Exhibit after registration.[233] An NRSRO will be required to update this information in a financial report furnished to the Commission under Rule 17g–3.

One commenter stated that the information may not be necessary given the different sizes and business models of credit rating agencies.[234] The Commission continues to believe this compensation information is necessary or appropriate in the public interest or for the protection of investors. It will assist the Commission in making the finding with respect to adequate financial resources required by Section 15E(a)(2)(C) of the Exchange Act.[235] Similar to the revenue information, this information will augment the financial statements that are required under Exhibit 11 because it provides detail on the expenses necessary to retain the credit rating agency's credit analysts. The Commission will compare this information with the revenues earned by the applicant for credit ratings services to evaluate an applicant's financial condition.

For these reasons, the Commission is adopting Exhibit 13 and the instructions for the Exhibit with the modifications described above.

C. Rule 17g–2—Recordkeeping

The Rating Agency Act amended Section 17(a)(1) of the Exchange Act to add NRSROs to the list of entities required to make and keep such records, and make and disseminate such reports, as the Commission prescribes by rule as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act.[236] The inclusion of NRSROs on the list also provides the Commission with authority under Section 17(b)(1) of the Exchange Act to examine all the records of an NRSRO.[237]

The Commission is implementing this rulemaking authority through Rule 17g–2. This rule requires an NRSRO to make and retain certain records relating to its business and to retain certain other business records made in the normal course of business operations. The rule also prescribes the time periods and manner in which all these records will be required to be retained.

Several commenters stated that Rule 17g–2 as proposed was unduly burdensome or onerous.[238] The Commission believes the rule is necessary or appropriate in the public interest or for the protection of investors and narrowly tailored to achieve its purpose.[239] The Commission designed the rule based on its experience with recordkeeping rules for other regulated entities.[240] These other books and records rules have proven integral to the Commission's investor protection function because the preserved records are the primary means of monitoring compliance with applicable securities laws.[241] Rule 17g–2 is designed to ensure that an NRSRO makes and retains records that will assist the Commission in monitoring, through its examination authority, whether an NRSRO is complying with the provisions of Section 15E of the Exchange Act[242] and the rules thereunder. For example, examiners will use the records to review whether an NRSRO is following its disclosed procedures and methodologies for determining credit ratings, its disclosed policies and procedures for preventing the misuse of material nonpublic

[227] *See* Moody's Letter.

[228] *See* Fitch Letter.

[229] *See* Gross Letter; R&I Letter.

[230] *See* Gross Letter.

[231] *See* R&I Letter.

[232] 15 U.S.C. 78o–7(a)(3).

[233] An applicant can request that this information be kept confidential to the extent permitted by law. *See* 17 CFR 200.80 and 17 CFR 200.83.

[234] *See* AEI Letter.

[235] *See* 15 U.S.C. 78o–7(a)(2)(C).

[236] *See* Section 5 of the Rating Agency Act and 15 U.S.C 78q(a)(1).

[237] *See* 15 U.S.C 78q(b)(1).

[238] *See, e.g.,* FSR Letter; AEI Letter.

[239] Section 15E(c)(2) of the Exchange Act (15 U.S.C. 78o–7(c)(2)) requires that the Commission's rules under the Rating Agency Act be narrowly tailored.

[240] *See, e.g.,* 17 CFR 240.17a–3 and 17a–4 (broker-dealers); 17 CFR 275.204–2 (investment advisers); 17 CFR 240.17Ad–6 and 17Ad–7 (transfer agents).

[241] *See Electronic Storage of Broker-Dealer Records,* Exchange Act Release No. 47806 (May 7, 2003), 68 FR 25281 (May 12, 2003); *see also* Commission order in *Matter of Deutsche Bank Securities, Inc. et al.,* Exchange Act Release No. 46937 (December 3, 2002) (''The recordkeeping rules are 'a keystone of the surveillance of broker-dealers' '') (citations omitted); Commission order in *Matter of J.P. Morgan Securities Inc.,* Exchange Act Release No. 51200 (February 14, 2005); *Electronic Recordkeeping by Investment Companies and Investment Advisers,* Investment Company Act Release No. 24991 (May 24, 2001) (''The recordkeeping requirements are a key part of the Commission's regulatory program for funds and advisers, as they allow [the Commission] to monitor fund and adviser operations, and to evaluate their compliance with federal securities laws.'').

[242] 15 U.S.C. 78o–7.

information, and managing conflicts of interest, and whether it is complying with Rules 17g–4, 17g–5, and 17g–6 discussed below.

Nonetheless, the Commission is adopting Rule 17g–2 with modifications to address issues commenters raised, to reduce burden, and to enhance recordkeeping requirements with respect to the issuance of credit ratings on certain asset-backed and mortgage-backed securities transactions. As a preliminary matter, the Commission notes that several commenters raised concerns with how examiners would use the books and records required under Rule 17g–2.[243] One commenter requested that the Commission clarify that examiners would not use their inspection of records to second-guess credit rating opinions.[244] The Commission does not intend that Rule 17g–2 be used as a means to substitute the Commission's judgment for that of an NRSRO with respect to the NRSRO's credit rating opinion.

Further, Section 15E(c)(2) of the Exchange Act provides that the Commission may not ''regulate the substance of credit ratings or the procedures and methodologies by which an NRSRO determines credit ratings.'' [245] The purpose of the recordkeeping requirements in Rule 17g–2 is to allow examiners to review whether an NRSRO is following its stated procedures and methodologies and otherwise complying with Section 15E of the Exchange Act [246] and the rules thereunder. It is important that users of credit ratings be given the opportunity to understand how a specific NRSRO determines its credit ratings. Consequently, Sections 15E(a)(1)(B)(ii) and 15E(a)(3) of the Exchange Act require an NRSRO to make this information publicly available.[247] The Commission's role is to examine whether an NRSRO has accurately disclosed this information so that users of credit ratings can assess its credit rating procedures and methodologies. The Commission's role also is to examine whether an NRSRO adheres to its credit rating procedures and methodologies.

A second commenter raised the concern that using records to examine whether an NRSRO has accurately disclosed information about how it determines credit ratings would result in the Commission's tacit endorsement of the credit ratings.[248] The Commission reiterates that the purpose of examining these records is to review whether an NRSRO has accurately disclosed information about, and adheres to, the procedures and methodologies it uses to determine credit ratings. As noted above, the Commission cannot ''regulate the substance of credit ratings or the procedures and methodologies by which an NRSRO determines credit ratings.'' [249] Users of credit ratings should not view the fact that the Commission has examined whether an NRSRO has accurately disclosed information about, and adheres to, its credit rating procedures and methodologies as an endorsement of the credit ratings or the procedures and methodologies used to determine the credit ratings. Users of credit ratings must evaluate a given NRSRO's procedures and methodologies for themselves and reach their own conclusions as to the quality of the procedures and methodologies. The Commission's role is limited to reviewing whether the information disclosed by an NRSRO is consistent with how the NRSRO conducts its credit rating activities. The Commission also notes that Section 15E(f) of the Exchange Act bars an NRSRO from representing that it has been ''designated, sponsored, recommended, or approved, or that [its] abilities or qualifications. * * * have in any respect been passed upon, by the United States, or any agency, officer, or employee thereof.'' [250]

Finally, another commenter stated that the recordkeeping rule should be principles based and permit an NRSRO to implement a recordkeeping system appropriate for its organizational structure and business model.[251] The Commission does not intend that Rule 17g–2 require a specific form of record or recordkeeping system. An NRSRO will have the flexibility to implement a recordkeeping system that captures the records required in Rule 17g–2 in a manner that conforms to the NRSRO's internal processes. At the same time, as noted above, Rule 17g–2 is designed to ensure that an NRSRO makes and retains records that will assist the Commission in monitoring, through its examination authority, whether an NRSRO is complying with the provisions of Section 15E of the Exchange Act [252] and the rules thereunder. The Commission believes that a principles based recordkeeping rule would be difficult to administer. It could lead to inconsistent recordkeeping by NRSROs and also create uncertainty for NRSROs and Commission examiners as to the records that must be retained. The Commission believes the better approach is to prescribe certain records that must be made and retained at a minimum to provide for consistent recordkeeping requirements across all NRSROs.

1. Paragraph (a) of Rule 17g–2

As adopted, paragraph (a) of Rule 17g–2 requires an NRSRO to make and retain certain books and records. The records required under paragraph (a) must be complete and current and not contain inaccurate information.[253] With respect to the specific records required under paragraph (a), the Commission has made several modifications in light of comments that will ease the recordkeeping burden. The Commission believes the records required in this paragraph are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act. As described below, they will assist the Commission in monitoring whether an NRSRO is complying with Section 15E of the Exchange Act and the rules thereunder.[254]

a. Paragraph (a)(1) of Rule 17g–2

As adopted, paragraph (a)(1) of Rule 17g–2 requires an NRSRO to make records of original entry into an NRSRO's accounting system, and records reflecting entries to and balances in all general ledger accounts of the NRSRO for each fiscal year. Rule 17g–2, as proposed, contained a similar provision. The Commission believes these fundamental business records are necessary for the preparation of the financial reports required to be prepared under Rule 17g–3. In addition, they will assist Commission examiners in reviewing the financial resources of an NRSRO and its revenue sources. The latter information will be important in identifying customers that provide an NRSRO with significant revenues and, consequently, could be in a position to exercise undue influence over a credit rating decision.

One commenter stated that, while it already maintains these types of records, the requirement to make them

[243] *See* DBRS Letter; Langohr Letter.

[244] *See* DBRS Letter.

[245] 15 U.S.C. 78o–7(c)(2).

[246] 15 U.S.C. 78o–7.

[247] 15 U.S.C. 78o–7(a)(1)(B)(ii) and 15 U.S.C. 78o–7(a)(3).

[248] *See* Langohr Letter.

[249] 15 U.S.C. 78o–7(c)(2).

[250] 15 U.S.C. 78o–7(f).

[251] *See* Moody's Letter.

[252] 15 U.S.C. 78o–7.

[253] *See, e.g., In the Matter of SG Cowens Securities Corporation*, Exchange Act Release No. 48335 (August 14, 2003) (''Implicit in the Commission's recordkeeping rules is the requirement that information in a required book or record be accurate.'').

[254] *See* 15 U.S.C. 78q(a)(1).

should be eliminated because the information in the Rule 17g–3 financial reports will be sufficient.[255] The Commission believes it is important that an NRSRO make and retain these records. They will provide Commission examiners with the source information that feeds into the Rule 17g–3 financial reports. Further, those financial reports are a snap shot of the NRSRO's financial condition as of its fiscal year end. These records will provide examiners with current financial information as of the time of their exam. For these reasons, the Commission is adopting paragraph (a)(1) of Rule 17g–2 substantially as proposed.

b. Paragraph (a)(2) of Rule 17g–2

As adopted, paragraph (a)(2) of Rule 17g–2 requires an NRSRO to make the following records with respect to each of the NRSRO's current credit ratings, as applicable: The identity of any credit analyst(s) that participated in the determination of the credit rating; the identity of the person(s) who approved the credit rating before it was issued; whether the credit rating was solicited or unsolicited; and the date the credit rating action was taken. This information will assist the Commission in monitoring whether the NRSRO is following its procedures and methodologies for determining credit ratings and whether the NRSRO is complying with procedures designed to prevent the misuse of material nonpublic information. For example, if questions arise about a particular credit rating, the record will provide the Commission staff with the names of the credit analysts that participated in determining the credit rating and the persons that approved the credit rating. This will identify for the Commission staff the persons with the best information as to how the credit rating was determined.

Rule 17g–2, as proposed, also would have required a record identifying the procedures and methodologies used to determine the credit rating and the method by which the credit rating was made publicly available. The Commission has eliminated these requirements to reduce recordkeeping burden and because Commission examiners can ascertain the information through a less burdensome requirement.[256] Under paragraph (a)(6) of Rule 17g–2, an NRSRO is required to separately document the procedures and methodologies it uses to determine credit ratings. The Commission examination staff will be able to refer to these records to understand how specific types of credit ratings are determined by the NRSRO. Therefore, examiners will not need an individual record identifying the methodology used to determine each credit rating. For similar reasons, the Commission has eliminated the proposed requirement to make a record of the method by which each credit rating was made readily accessible. An NRSRO must disclose in Form NRSRO how it makes its credit ratings readily accessible. Commission examiners can review this disclosure to understand how a specific credit rating was made readily accessible.

The Commission notes, however, that if an NRSRO materially diverges from its stated methodology for determining a specific type of credit rating or for making credit ratings readily accessible, it may violate the requirements to disclose in Form NRSRO information about credit ratings methodologies and how credit ratings are made readily accessible and, in the former case, the requirement in paragraph (a)(6) to document the procedures and methodologies for determining credit ratings. Consequently, an NRSRO must include in its documented procedures any alternative methodologies for determining a specific type of credit rating and when such alternatives may be used by a credit analyst.

Finally, consistent with changes to Form NRSRO discussed above, the final rule changes the requirement proposed in Rule 17g–2(a)(2) to identify the credit analysts ''who determined'' the credit rating to credit analysts ''who participated in determining'' the credit rating. In all other respects, the Commission is adopting paragraph (a)(2) of Rule 17g–2 substantially as proposed.

c. Paragraph (a)(3) of Rule 17g–2

As adopted, paragraph (a)(3) of Rule 17g–2 requires an NRSRO to make an account record for each person (for example, an obligor, issuer, underwriter, or other user) that has paid for the issuance or maintenance of a credit rating indicating the identity and address of the person and the credit ratings determined or maintained for the person. This information will assist the Commission in monitoring whether the NRSRO is complying with procedures for addressing and managing conflicts of interest as well as complying with the requirements in Rule 17g–5 prohibiting certain conflicts of interest. For example, examiners can use this record to identify persons that have paid the NRSRO for a significant number of credit ratings (*e.g.*, a regular sponsor of structured products). These persons, given the large volume of business they provide the NRSRO, may be in a position to exert inappropriate influence on the NRSRO to issue favorable credit ratings.

One commenter pointed out that by using the term ''solicits'' the rule could be construed to require a record of each person that asks the NRSRO to issue a credit rating, regardless of whether the person ultimately pays for the credit rating or the NRSRO ultimately issues the credit rating.[257] The Commission agrees that the rule text, as proposed, contained a degree of ambiguity. Further, the Commission believes it could be difficult and unduly burdensome to create a record of each person who approaches the NRSRO about having a credit rating issued. For example, some contacts between the NRSRO and a person may never progress beyond initial inquiries. For these reasons, the Commission modified the rule to clarify that the requirement is limited to persons who pay for credit ratings that are issued publicly.

The Commission also modified paragraph (a)(3) of Rule 17g–2 by eliminating the requirement to provide the customer's ''principal'' address. The term ''principal address'' has a legal meaning in some contexts and, accordingly, could unduly complicate the process of creating the record. The rule now requires the customer's ''address'' without regard to whether it is the principal address. In all other respects, the Commission is adopting paragraph (a)(3) of Rule 17g–2 substantially as proposed.

d. Paragraph (a)(4) of Rule 17g–2

As adopted, paragraph (a)(4) of Rule 17g–2 requires an NRSRO to make an account record for each subscriber to the credit ratings and/or credit analysis reports of the NRSRO indicating the identity and address of the subscriber. This information will assist the Commission in monitoring whether the NRSRO was complying with its procedures for addressing and managing conflicts of interest and the handling of material, nonpublic information as well as complying with the requirements in Rule 17g–5 prohibiting certain conflicts of interest. The Commission did not receive any comments on this provision.

[255] *See* Fitch Letter.

[256] Several commenters requested that the Commission eliminate the requirement to make a record identifying the procedures and methodologies used to determine the credit rating. *See* DBRS Letter; Fitch Letter; Moody's Letter; Langohr Letter. These commenters argued, among other things, that the requirement interfered with the process of determining credit ratings, was not consistent with normal practice, and was burdensome. *Id.*

[257] *See* Fitch Letter.

For the reasons discussed above with respect to paragraph (a)(3) of Rule 17g–2, the Commission has modified the provision to eliminate the reference to a customer's ''principal'' address. In all other respects, the Commission is adopting paragraph (a)(4) of Rule 17g–2 substantially as proposed.

e. Paragraph (a)(5) of Rule 17g–2

As adopted, paragraph (a)(5) of Rule 17g–2 requires an NRSRO to make a record listing the general types of services and products offered by the NRSRO. This record will provide the Commission with details of the ancillary business activities of the NRSRO and, therefore, will be useful in identifying potential conflicts of interest that arise from such activities. Commission examiners then will be able to review whether the NRSRO has implemented procedures to manage these potential conflicts.

One commenter pointed out that the rule text as proposed could be construed to require a record each time the NRSRO made an offer to provide a service to a customer.[258] This was not the intent of the proposed requirement. Rather, it was to require a record listing the general types of services the NRSRO offers. The record is designed to provide Commission examiners with a way to quickly understand the NRSRO's business model based on the types of services and products it provides to persons. The record does not require an entry for each offer to a person or transaction with a person. The final rule has been modified to clarify that the provision only requires a list of the types of services offered by the NRSRO. In all other respects, the Commission is adopting paragraph (a)(5) of Rule 17g–2 substantially as proposed.

f. Paragraph (a)(6) of Rule 17g–2

As adopted, paragraph (a)(6) of Rule 17g–2 requires an NRSRO to make a record documenting the established procedures and methodologies used by the NRSRO to determine credit ratings. This provision is being added to Rule 17g–2 in response to comments regarding Exhibit 2 to Form NRSRO, which, as proposed, required an NRSRO to attach the procedures and methodologies to the Form and make them publicly available after registration. As discussed above, Exhibit 2 has been modified so that it now requires a description of the procedures and methodologies as opposed to each procedure and methodology. The intent is to require sufficient information in Exhibit 2 to allow users of credit ratings to develop an understanding of how the NRSRO determines credit ratings without imposing the burden of making a voluminous submission to the Commission and public disclosure. It also is designed to avoid the public disclosure of proprietary information.

Accordingly, rather than require these procedures and methodologies to be attached to Form NRSRO and disclosed publicly, the Commission is requiring that they be documented internally. This will permit Commission examiners to review the procedures and methodologies in order to review whether the NRSRO has disclosed sufficient information about them in Form NRSRO to permit users of credit ratings to understand how the NRSRO determines credit ratings. It also will permit Commission examiners to review whether the NRSRO is adhering to its procedures and methodologies and complying with other rules.[259] For example, Rule 17g–6 prohibits, among other things, an NRSRO from issuing or modifying, or threatening to issue or modify, a credit rating contrary to the NRSRO's established procedures and methodologies. The Commission's ability to enforce this prohibition will depend in part on the NRSRO having fully documented its procedures and methodologies. As discussed below, these records also will be an important means for the Commission to gain a better understanding of the procedures and methodologies used by credit rating agencies to treat the credit ratings of other credit rating agencies when determining the overall credit rating for securities or money market instruments issued by asset pools or as part of any asset-backed or mortgage-backed securities transactions (''structured products'').

As noted above, to the extent a credit rating agency permits credit analysts to diverge from the procedures or methodologies it has established, the NRSRO must document the circumstances under which such a divergence will be permitted and the alternative procedure or methodology that must be used. In effect, documenting the divergence in this manner will make it part of the NRSRO's established procedures and methodologies and, therefore, the NRSRO will be adhering to the requirements of paragraph (a)(6) of Rule 17g–2. Failing to document when the divergence will be permitted or required will expose the NRSRO to potential violations of Rules 17g–1, 17g–2, and 17g–6.

For the foregoing reasons and the reasons discussed with respect to Exhibit 2 of Form NRSRO, the Commission is eliminating the requirement that an NRSRO attach to Form NRSRO and make publicly available its procedures and methodologies for determining credit ratings. Instead, the Commission is adopting paragraph (a)(6) of Rule 17g–2 to require that the procedures and methodologies be documented internally.

g. Paragraph (a)(7) of Rule 17g–2

As adopted, paragraph (a)(7) of Rule 17g–2 requires an NRSRO to make a record that lists each security and its corresponding credit rating issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction where the NRSRO in determining the credit rating for the security treats assets within such pool or as a part of such transaction that are not subject to a credit rating of the NRSRO by one or more of four ways specified in the rule to determine a credit rating for the security. This provision was not proposed but is being added because of modifications to paragraph (a)(4) of Rule 17g–6, which prohibits anti-competitive practices relating to determining credit ratings for structured products. As discussed below with respect to paragraph (a)(4) of Rule 17g–6, the Commission believes this provision is necessary or appropriate in the public interest or for the protection of investors because it will assist the Commission in monitoring practices in the structured product area that many commenters believe are anti-competitive.

2. Paragraph (b) of Rule 17g–2

As adopted, paragraph (b) of Rule 17g–2 requires an NRSRO to retain certain records (excluding drafts of documents) that relate to its business as a credit rating agency.[260] The records required to be retained in paragraph (b) of Rule 17g–2 are those an NRSRO makes or receives as a matter of business practice but are not records an NRSRO is required to make. The Commission believes the records required to be retained under paragraph (b) are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of

[258] *See* Fitch Letter.

[259] *See* AFP Letter.

[260] As discussed below, several commenters sought clarification as to whether the record retention requirements in paragraph (b) of Rule 17g–2, as proposed, would apply to drafts of documents. The Commission did not intend these requirements to apply to drafts and has added language the introductory text of paragraph (b) of Rule 17g-2 excluding drafts of documents.

the Exchange Act because, as described below, they will assist the Commission in monitoring whether an NRSRO is complying with Section 15E of the Exchange Act [261] and the rules thereunder.

Since these records are not required to be made, an NRSRO will not have to update them. Rather, the NRSRO is required to retain the original record in an unaltered form or a true copy of the original record for the prescribed retention period. The Commission notes, however, that, under Section 15E(b)(1) of the Exchange Act,[262] an NRSRO must update, as provided in that section, certain information in the Forms and Exhibits that are required to be retained under paragraph (b)(9) of Rule 17g–2 (discussed below).

a. Paragraph (b)(1) of Rule 17g–2

As adopted, paragraph (b)(1) of Rule 17g–2 requires an NRSRO to retain all significant records underlying the information included in the NRSRO's annual financial reports required pursuant to Rule 17g–3. This includes bank statements, bills payable and receivable, trial balances, and records relating to the determination of the largest customers. These records will assist Commission examiners in understanding and reviewing the basis of information provided in the financial reports the NRSRO will be required to annually furnish to the Commission. For example, examiners can use the records relating to the list of the largest customers to review whether the NRSRO has identified such customers in accordance with Rule 17g–3.

The Commission received one comment on this provision.[263] The commenter stated that, while it retains these records, the requirement should be eliminated because the financial reports required in Rule 17g–3 provide sufficient information in these areas. Similar to the records required in paragraph (a)(1) of Rule 17g–2, the Commission believes it is important that an NRSRO retain these records. They will provide Commission examiners with the source information that feeds into the Rule 17g–3 financial reports. Further, as noted above, those financial reports are a snap shot of the NRSRO's financial condition as of its fiscal year end. These records will provide examiners with current information as of the time of their exam. For these reasons, the Commission is adopting paragraph (b)(1) of Rule 17g–2 substantially as proposed.

b. Paragraph (b)(2) of Rule 17g–2

As adopted paragraph (b)(2) of Rule 17g–2 requires an NRSRO to retain internal records, including nonpublic information and work papers, used to form the basis of a credit rating. These records will include, for example, notes of conversations with the management of an issuer or obligor that was the subject of the credit rating and the inputs and raw results of a quantitative model used to determine the credit rating. The retention of this information, and other internal records used to determine a credit rating, will assist the Commission in reviewing whether an NRSRO is adhering to its established procedures and methodologies for determining credit ratings and for preventing the misuse of material nonpublic information. It also will assist the Commission in gaining a better understanding of the practices used by credit rating agencies to incorporate the credit ratings of other credit rating agencies into the overall credit rating of a structured product.

The Commission received several comments on the rule text in this paragraph as proposed.[264] The comments generally were similar in that they sought clarification that the provision does not require the retention of every record that somehow relates to the credit rating.[265] In response, the Commission notes that it did not intend the rule to be interpreted that broadly. The provision only applies to internal records and documents that are used to form the basis of the credit rating. The provision explicitly excludes publicly available information and the introductory text to paragraph (b) of Rule 17g–2 excludes drafts of documents from its provisions. The rule does not require an NRSRO to retain internal documents that a credit analyst reviews but that do not factor into the determination of the credit rating. For the foregoing reasons, the Commission is adopting paragraph (b)(2) of Rule 17g–2 substantially as proposed.

c. Paragraph (b)(3) of Rule 17g–2

As adopted, paragraph (b)(3) of Rule 17g–2 requires an NRSRO to retain credit analysis reports, credit assessment reports, and private credit rating reports and internal records, including nonpublic information and work papers, used to form the basis for the opinions expressed in these reports. These reports—which credit rating agencies commonly create and sell as an ancillary service to the issuance of credit ratings—generally provide a detailed analysis of the information and assumptions underlying a credit rating. In developing these reports, the credit analyst may receive material nonpublic information about an issuer or obligor. For example, an issuer may request a private credit rating report to understand how a contemplated transaction would impact the current publicly available credit rating of its debt securities. Consequently, the retention of these reports and internal records used to form the basis of the reports will assist the Commission in monitoring whether the NRSRO is complying with its policies and procedures for preventing the misuse of material nonpublic information.

The Commission received several comments on the rule text of this paragraph as proposed.[266] Similar to the comments regarding paragraph (b)(2) of Rule 17g–2, the comments sought clarification that the provision does not require the retention of every potentially relevant record such as records that do not contain information that the credit analysis used to form the basis of conclusions in the report.[267] In response to these comments, the Commission notes that it does not intend the rule to be interpreted to apply to internal documents that a credit analyst reviews but that do not factor into the conclusions in the final report. Further, the provision explicitly excludes publicly available information and the introductory text to paragraph (b) of Rule 17g–2 excludes drafts of documents from its provisions. Consequently, the Commission is adopting paragraph (b)(3) of Rule 17g–2 substantially as proposed.

d. Paragraph (b)(4) of Rule 17g–2

As adopted, paragraph (b)(4) of Rule 17g–2 requires an NRSRO to retain compliance reports and compliance exception reports. The retention of these reports will identify activities of the NRSRO that its designated compliance officer had determined raised, or did not raise, compliance and control issues. Commission examiners will then be able to review how the NRSRO addressed the compliance issues. This can lead to more focused examinations, which also will decrease the burden on the NRSRO. The reports also will provide information as to whether the NRSRO is

[261] 15 U.S.C. 78o–7.

[262] *See* 15 U.S.C. 78o–7(b)(1).

[263] *See* Fitch Letter.

[264] *See* S&P Letter; DBRS Letter; Fitch Letter; Moody's Letter.

[265] *Id.*

[266] *See* Letter dated March 8, 2007 from John B. Rutherfurd, Jr. (''Rutherfurd Letter''); DBRS Letter; Fitch Letter; Moody's Letter; S&P Letter.

[267] *Id.*

complying with its established methodologies, procedures, and policies.

The Commission received two comments on this provision.[268] One commenter stated that it should be narrowed to exclude compliance reports that do not find any deficiencies.[269] The commenter stated that Commission examiners might use reports that do not contain deficiencies to second-guess the designated compliance officer.[270] As noted above, compliance reports that do not contain deficiencies will be useful to examiners in terms of focusing exams. This commenter also stated that the provision should not apply to whistleblower reports. The Commission understands the concern that including whistleblower reports with the provision's scope could have a chilling effect on an employee's willingness to report violations, particularly in smaller organizations. For the purposes of this rule, the Commission does not view a whistleblower report as a final compliance report or a compliance exception report. It is an allegation made by someone within the organization about inappropriate or unlawful conduct. However, any final report of the NRSRO's compliance officer resulting from the allegations or disclosures contained in the report of a whistleblower will be a compliance report subject to this provision. The compliance officer's final compliance report on the matter can be drafted in a manner to protect the whistleblower by not identifying the person.

The other commenter stated that the Commission should clarify that the rule does not require the retention of draft reports.[271] In response, the Commission notes, as discussed above, that it did not intend the rule to be interpreted to require the retention of draft reports and other interim work product. The Commission has clarified this by adding introductory text to paragraph (b) of Rule 17g–2 that excludes drafts of documents from its provisions. For the foregoing reasons, the Commission is adopting paragraph (b)(4) of Rule 17g–2 substantially as proposed.

e. Paragraph (b)(5) of Rule 17g–2

As adopted, paragraph (b)(5) of Rule 17g–2 requires an NRSRO to retain internal audit plans, internal audit reports, documents relating to internal audit follow-up measures, and all records identified by its internal auditors as necessary to perform the audit of an activity that relates to its business as a credit rating agency. The retention of these records will identify activities of the NRSRO that its internal auditors had determined raised, or did not raise, compliance or control issues. They also will assist the Commission in reviewing whether the NRSRO is complying with its established methods, procedures, and policies.

The Commission received two comments on this provision.[272] The first commenter requested that the provision be deleted because it would chill NRSROs from establishing robust internal audit departments.[273] The Commission continues to believe these are important records that will assist the Commission examination staff in understanding a given NRSRO's internal operations and activities. As noted above, one of the Commission's oversight roles is to review whether an NRSRO is accurately disclosing information about, and adhering to, its procedures and methodologies for determining credit ratings. Reports of an NRSRO's internal auditors can provide highly useful information to assist the Commission in performing this regulatory function. The Commission notes that the provision requires an NRSRO to maintain internal audit records for three years. This retention period is designed to provide Commission examiners with the opportunity to review them. Finally, the Commission staff's experience with reviewing supervised entities such as broker-dealers and broker-dealer holding companies has not indicated that having access to internal audit reports chills the robust functioning of their internal audit departments.

The second commenter requested that the Commission clarify that the provision only requires the retention of final internal audit reports and not interim work product.[274] In response, the Commission notes that it does not intend the provisions to apply to drafts of internal audit records and, as noted above, has added introductory text to paragraph (b) of Rule 17g–2 that excludes drafts of documents from its provisions. The commenter also requested that the provision permit an NRSRO to tailor its internal audit records to its business plan.[275] In response, the Commission notes that the provision only requires an NRSRO to retain internal audit records. It does not specify the types of audit records that must be made. An NRSRO is free to establish an internal audit process that is tailored to its business model. Finally, this commenter requested that the Commission clarify that the provision does not require an NRSRO that is a public company to retain financial reporting internal auditing reports beyond those required under the Exchange Act.[276] The Commission notes that Rule 17g–2 requires an NRSRO to retain internal audit reports that relate to its business as a credit rating agency. The NRSRO must determine whether an internal audit report created under a statutory or regulatory requirement is one that relates to its credit rating business and, therefore, must be retained under this provision.

For the foregoing reasons, the Commission is adopting paragraph (b)(5) of Rule 17g–2 substantially as proposed.

f. Paragraph (b)(6) of Rule 17g–2

As adopted, paragraph (b)(6) of Rule 17g–2 requires an NRSRO to retain copies of marketing materials that are published or otherwise made available to persons that are not associated with the NRSRO. Section 15E(f) of the Exchange Act prohibits an NRSRO from representing that it has been designated, recommended, or approved, or that its abilities or qualifications have been passed upon by any federal agency or officer.[277] The retention of marketing materials will assist the Commission in reviewing whether the NRSRO is complying with this statutory provision.

The Commission received two comments on the provision.[278] One commenter sought clarification that it does not apply to internal documents of the marketing department.[279] The second commenter requested that the Commission provide guidance on the meaning of ''marketing materials.''[280] The Commission intended that the provision only apply to materials that are actually used to market the NRSRO's credit rating services. The Commission has modified the rule text to clarify that the requirement only applies to marketing materials that are published or otherwise made available to persons who are not associated with the NRSRO. The Commission does not intend that the provision be interpreted to apply to records that are used by the marketing department for internal purposes. This modification is designed to provide greater clarity on the marketing materials that must be retained. In

[268] *See* DBRS Letter; Moody's Letter.

[269] *See* DBRS Letter.

[270] *Id.*

[271] *See* Moody's Letter.

[272] *See* DBRS Letter; Moody's Letter.

[273] *See* DBRS Letter.

[274] *See* Moody's Letter.

[275] *Id.*

[276] *Id.*

[277] 15 U.S.C. 78o–7(f).

[278] *See* R&I Letter; DBRS Letter.

[279] *See* R&I Letter.

[280] *See* DBRS Letter.

response to the second commenter, the Commission notes that marketing materials, generally, will include any written documents that an NRSRO publishes or provides to persons that explain or describe its credit rating services and are designed to induce persons to purchase the services.

In all other respects, the Commission is adopting paragraph (b)(6) of Rule 17g–2 substantially as proposed.

g. Paragraph (b)(7) of Rule 17g–2

As adopted, paragraph (b)(7) of Rule 17g–2 requires an NRSRO to retain external and internal communications, including electronic communications, received and sent by the nationally recognized statistical rating organization and its employees that relate to initiating, determining, maintaining, changing, or withdrawing a credit rating. The Commission received several comments on the proposed rule text of the paragraph.[281] The commenters all stated generally that the requirement was overbroad and should be narrowed.[282] One suggested that it only require external communications.[283] Two suggested it only require communications used by a credit analyst to form the basis of a credit rating.[284] Another commenter suggested the provision should have a materiality threshold.[285]

In response to these comments, the Commission notes that the retention of written communications has played an important role in assisting the Commission in identifying legal violations and compliance issues with respect to other regulated entities.[286] The Commission believes that internal communications will play an important role in assisting the Commission in identifying legal violations and compliance issues in its oversight of NRSROs. For example, paragraph (a)(4) of Rule 17g–6 prohibits certain practices if they are undertaken with anti-competitive intent. The ability of the Commission to prove intent will be difficult absent communications that demonstrate why an NRSRO engaged in a particular act. Further, the Commission believes that narrowing the provision to communications used by a credit analyst to form the basis of a credit rating would carve out highly relevant communications, including communications that could be relevant to compliance with Rule 17g–4 (nonpublic information), Rule 17g–5 (conflicts of interest), and, as noted above, Rule 17g–6 (prohibited practices). Finally, the Commission believes that a materiality threshold would be very difficult to comply with and enforce. The degree of materiality of a communication viewed in isolation may not be apparent. In some cases, a seemingly innocuous communication may in fact be highly material when placed in the context of related events and other communications.

For the foregoing reasons, the Commission is adopting paragraph (b)(7) of Rule 17g–2 substantially as proposed.

h. Paragraph (b)(8) of Rule 17g–2

As adopted, paragraph (b)(8) of Rule 17g–2 requires an NRSRO to retain internal documents that contain information, analysis, or statistics that were used to develop a procedure or methodology to treat the credit ratings of another NRSRO for the purpose of determining a credit rating of a security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction.[287] This provision was not proposed but is being added because of modifications to paragraph (a)(4) of Rule 17g–6, which prohibits anti-competitive practices relating to determining credit ratings for structured products. As discussed below with respect to paragraph (a)(4) of Rule 17g–6, the Commission believes this provision is necessary or appropriate in the public interest or for the protection of investors because it will assist the Commission in monitoring practices in the structured product area that many commenters believe are anti-competitive.

i. Paragraph (b)(9) of Rule 17g–2

As adopted, paragraph (b)(9) of Rule 17g–2 requires an NRSRO to retain for each security identified in the record required under paragraph (a)(7) of Rule 17g–2, any document that contains a description of how any assets within such pool or as a part of such transaction not rated by the NRSRO but rated by another NRSRO were treated for the purpose of determining the credit rating of the security. This provision was not proposed but is being added because of modifications to paragraph (a)(4) of Rule 17g–6, which prohibits anti-competitive practices relating to determining credit ratings for structured products. As discussed below with respect to paragraph (a)(4) of Rule 17g–6, the Commission believes this provision is necessary or appropriate in the public interest or for the protection of investors because it will assist the Commission in monitoring practices in the structured product area that many commenters believe are anti-competitive.

j. Paragraph (b)(10) of Rule 17g–2

As adopted, paragraph (b)(10) of Rule 17g–2 requires an NRSRO to retain Form NRSROs (including Exhibits and accompanying information and documents) submitted to the Commission. This provision will make the Forms and Exhibits subject to the retention and production requirements in Rule 17g–2. For example, NRSROs will be required to retain them in a manner that makes them easily accessible to the NRSRO's principal office. This will assist Commission examiners, particularly examiners in regional offices, in accessing the records on site during an examination.

The Commission did not receive any comments on the proposed rule text in this paragraph (proposed as paragraph (b)(9)) and is adopting it substantially as proposed.

3. Paragraph (c) of Rule 17g–2

As adopted, paragraph (c) of Rule 17g–2 requires an NRSRO to retain the records identified in paragraphs (a) and (b) for three years after the date the record is made or received. The Commission believes the three-year retention period is necessary or appropriate in the public interest or for the protection of investors because it is designed to ensure that the records are preserved for at least one internal audit or Commission exam cycle.

The proposed rule, however, articulated different retention periods for the records identified in paragraphs (a)(2) and (a)(3); namely, for three years after the NRSRO's business relationship with the person ended. The Commission received a number of comments on this proposed retention period all of which stated that it was either too long or

[281] *See* ASF Letter; Rutherfurd Letter; DBRS Letter; Fitch Letter; S&P Letter.

[282] *Id.*

[283] *See* DBRS Letter.

[284] *See* Rutherfurd Letter; S&P Letter.

[285] *See* Fitch Letter.

[286] *See, e.g.,* Commission complaint in *Commission* v. *Citigroup Global Markets Inc.,* 03 CV 2945 (WHP) (S.D.N.Y.) (April 28, 2003); Commission complaint in *Commission* v. *Merrill, Lynch, Pierce, Fenner & Smith,* 03 CV 2941 (WHP) (S.D.N.Y.) (April 28, 2003); Commission Order in *Matter of Columbia Management Advisers, Inc. and Columbia Funds Distributor, Inc.,* Securities Act Release No. 8534 (February 9, 2005).

[287] As proposed, paragraph (b)(8) required an NRSRO to retain a record required to be made under paragraph (b) of proposed Rule 17g–6. The record required under paragraph (b) of proposed Rule 17g–6 would have documented when an NRSRO refused to issue or withdrew a credit rating for a security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage backed securities transaction. This proposed provision in Rule 17g–6 has been eliminated and, therefore, the requirement to retain this record in Rule 17g–2 also has been eliminated.

unclear.[288] The Commission believes there has been some confusion regarding the retention requirement for these records. The proposed rule was designed so that an NRSRO would retain the last version of an account record for three years after the account was closed. The Commission believes the simpler and clarified text in the adopted version of the rule is designed to ensure this record is retained for this period.

In other respects, paragraph (c) of Rule 17g–2 is being adopted substantially as proposed.

4. Paragraph (d) of Rule 17g–2

As adopted, paragraph (d) of Rule 17g–2 requires an NRSRO to maintain an original, or a true and complete copy of the original, of each record required to be retained pursuant to paragraphs (a) and (b) of Rule 17g–2 in a manner that, for the applicable retention period specified in paragraph (c) of Rule 17g–2, makes the original record or copy easily accessible to the principal office of the NRSRO and to any other office that conducted activities causing the record to be made or received. The Commission believes this rule is necessary or appropriate in the public interest or for the protection of investors because it is designed to facilitate Commission examination of the NRSRO and to avoid delays in obtaining the records during an on-site examination. The rule does not specify the format in which the records must be retained. Consequently, NRSROs may retain them in, for example, paper form, on microfilm or microfiche, or electronically.

The Commission did not receive any comments on this provision and is adopting it substantially as proposed.

5. Paragraph (e) of Rule 17g–2

As adopted, paragraph (e) of Rule 17g–2 provides that an NRSRO can use the services of a third-party record custodian to make and retain the records identified in paragraphs (a) and (b), provided the NRSRO furnishes the Commission with a written undertaking of the custodian. The rule prescribes the form of the undertaking; namely, that the third-party must represent that the records are the exclusive property of the NRSRO, will be produced promptly to the NRSRO or the Commission or its representatives at the request of the NRSRO, and will be available for inspection by the Commission or its representatives. The rule also provides that an NRSRO remains responsible for complying with the Commission's books and records rules, notwithstanding the fact that a third-party is making and/or storing them. The Commission believes this rule is necessary or appropriate in the public interest or for the protection of investors because it is designed to ensure that storing the records with a third-party does not make them less accessible than records stored at an NRSRO's offices.

The Commission received three comments on this provision.[289] One commenter stated that the form of the undertaking could conflict with certain foreign business practices and, therefore, suggested that the NRSRO be required to provide the undertaking.[290] The Commission notes, however, that the undertaking is designed to ensure that a third-party custodian is under a direct obligation to produce the records to the Commission and its representatives. An NRSRO already is obligated under Section 17(b)(1) of the Exchange Act and Rule 17g–2 to produce these records.[291] This obligation is in no way diminished because a third-party custodian is holding the records. The undertaking establishes a direct obligation on the third-party to produce the records to the Commission and its representatives. This direct obligation will be particularly important in situations where the NRSRO is unable or unwilling to request that the third-party produce the records.

The second commenter requested that the form of the undertaking be modified in a manner that would obligate the third-party to only comply with ''reasonable'' requests for records and only to the extent that producing the records was permitted by local law.[292] While the Commission is not codifying this suggestion into the rule, the Commission and its representatives make every effort to work with regulated entities on the scope and timing of record requests to lessen the burden and establish a production schedule that is practicable, given the circumstances.

The final commenter stated that an NRSRO should not be required to use a third-party to store its records.[293] The Commission notes that the rule does not require an NRSRO to use a third-party custodian to store its records. Rather, it provides the option for an NRSRO to use a third-party record custodian.

For these reasons, the Commission is adopting paragraph (e) of Rule 17g–2 substantially as proposed.

6. Paragraph (f) of Rule 17g–2

As adopted, paragraph (f) of Rule 17g–2 requires an NRSRO to promptly furnish the Commission or its representatives with legible, complete, and current copies, and, if specifically requested English translations, of those records of the NRSRO required to be retained under Rule 17g–2, or any other records of the NRSRO subject to examination under Section 17(b) of the Exchange Act[294] that are requested by the Commission or its representatives. As discussed in the next section, the proposed rule has been modified to incorporate a provision that the produced records be translated if necessary. The Commission believes this rule is necessary or appropriate in the public interest or for the protection of investors because it is designed to facilitate Commission examinations of NRSROs.

The Commission received one comment on the provision.[295] Specifically, the commenter stated that the provision should not require an NRSRO to produce compliance and audit reports because doing so could adversely impact deliberations related to these functions and chill whistleblowers. The Commission explained above how the retention of compliance and audit reports under paragraphs (b)(4) and (b)(5) of Rule 17g–2, respectively, will assist Commission examiners in reviewing NRSROs. However, the retention of these records without the corresponding requirement to produce them would prevent the Commission and its examiners from using the records for these purposes. Therefore, the Commission believes they must be produced upon request to the Commission and its representatives.

For these reasons, the Commission is adopting the provisions in paragraph (f) of Rule 17g–2 substantially as proposed.

7. Non-Resident NRSROs

Rule 17g–2, as proposed, contained provisions in two paragraphs (paragraphs (f) and (h)) designed to address the fact that credit rating agencies not located in the U.S. may become NRSROs. After consideration of the comments and for the reasons discussed below, the Commission is eliminating these provisions from Rule 17g–2, as adopted, except for the provision concerning translating records.

[288] *See* Gross Letter; Rutherfurd Letter; R&I Letter; DBRS Letter; Fitch Letter; S&P Letter; Moody's Letter; LACE Letter.

[289] *See* R&I Letter; Fitch Letter; LACE Letter.

[290] *See* R&I Letter.

[291] 15 U.S.C. 78q(b)(1).

[292] *See* Fitch Letter.

[293] *See* LACE Letter.

[294] *See* 15 U.S.C 78q(b).

[295] *See* Moody's Letter.

Paragraph (f) of proposed Rule 17g–2 would have required that a non-resident NRSRO must undertake to send books and records to the Commission and its representatives upon request. The undertaking would have been required to be attached to an initial application for registration as an NRSRO. The Commission explained in the proposing release that the undertaking was designed to provide a mechanism for the Commission examination staff to inspect records maintained overseas without having to travel to the location. In addition, because some non-resident NRSROs may maintain original records in a language other than English, the proposed undertaking would have required a translation if the Commission requested it.

The Commission received four comments on the proposed rule text in this paragraph.[296] Generally, the commenters objected to various representations in the form of the non-resident undertaking [297] or to the requirement to provide the undertaking altogether.[298] After considering the comments, the Commission believes the requirement for non-resident NRSROs to provide a special undertaking is unnecessary. As NRSROs, they are subject to the production requirements of Section 17(b) of the Exchange Act [299] and Rule 17g–2(f). Therefore, the Commission and its representatives will not require the non-resident undertaking to compel a foreign NRSRO to produce the records. Moreover, Rule 17g–2(f), as adopted, requires the records to be ''furnished'' to the Commission. Thus, an NRSRO located outside the U.S. is required to send the records to the Commission upon request.

However, the Commission continues to believe that the representation in the proposed undertaking to provide translated records is necessary or appropriate in the public interest or for the protection of investors. Providing un-translated records to the Commission could significantly delay and hinder its oversight function. Consequently, this provision has been moved into the provisions of paragraph (f) of Rule 17g–2. In all other respects, the provisions of paragraph (f) of proposed Rule 17g–2 have been eliminated from the final rule.

The provisions of paragraph (h) of proposed Rule 17g–2 would have defined the term *non-resident rating organization* for the purpose of specifying the type of NRSRO that would have been required to provide the non-resident undertaking. The definition is no longer necessary and has been eliminated from the adopted rule.

For these reasons, the Commission is eliminating the provisions in Rule 17g–2 relating to non-resident NRSROs except for the provision concerning the translation of records.

D. Rule 17g–3—Annual Financial Reports

Section 15E(k) of the Exchange Act requires an NRSRO to furnish to the Commission, on a confidential basis [300] and at intervals determined by the Commission, such financial statements and information concerning its financial condition as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.[301] The statute also provides that the Commission may, by rule, require that the financial statements be certified by an independent public accountant.[302] Rule 17g–3 requires an NRSRO to furnish the Commission on an annual basis certain financial reports. The furnishing of these reports will serve two important functions in the NRSRO regulatory program.

First, Section 15E(d) of the Exchange Act provides that the Commission shall, by order, censure, place limitations on the activities, functions or operations of, suspend for a period not exceeding 12 months, or revoke the registration of an NRSRO if, among other things, the NRSRO fails to maintain adequate financial and managerial resources to consistently produce credit ratings with integrity.[303] The financial reports will assist the Commission in monitoring the NRSRO's financial resources and the resources it commits to management to evaluate whether the Commission must take action under Section 15E(d) of the Exchange Act.[304]

Second, Section 15E(b)(1) of the Exchange Act requires an NRSRO to promptly amend its application for registration, as prescribed in that section, if any information or document provided in the application becomes materially inaccurate.[305] Form NRSRO requires the following financial information: a list of large customers in terms of net revenues; audited financial statements; information about revenues; and information about credit analyst compensation. This information is required to be as of, or for, the NRSRO's previous fiscal year. Accordingly, the information only will become materially inaccurate and, therefore, be required to be updated on an annual basis. In addition, the information will be submitted with Form NRSRO on a confidential basis to the extent permitted by law [306] and will not have to be made publicly available pursuant to Section 15E(a)(3) of the Exchange Act [307] and Rule 17g–1(i) thereunder. Therefore, because the information only will be disclosed to the Commission, it is more appropriate to require that it be updated through the Commission's authority under Section 15E(k) of the Exchange Act and Rule 17g–3 thereunder than through annual furnishings of Form NRSRO.[308]

After consideration of the comments, Rule 17g–3 has been modified in several ways. In particular, the rule has been restructured to prescribe that the audit requirement only applies to the financial statements. The proposed schedules to the financial statements are now separate financial reports that are not required to be audited. For the reasons discussed above and below, the Commission believes Rule 17g–3, as modified, is necessary or appropriate in the public interest or for the protection of investors.[309]

1. Paragraph (a) to Rule 17g–3

As adopted, paragraph (a) of Rule 17g–3 requires an NRSRO to annually furnish the Commission four, or in some cases five, financial reports. The reports must be furnished not more than 90 days after the end of the NRSRO's fiscal year and the information in the reports must be as of the most recently ended fiscal year. The reports will consist substantially of the same information that would have been in the financial statements and schedules required under Rule 17g–3, as proposed. The Commission received numerous comments requesting that the proposed schedules to the audited financial

[296] *See* AEI Letter; R&I Letter; DBRS Letter; Fitch Letter.

[297] *See*, *e.g.*, DBRS Letter.

[298] *See* AEI Letter.

[299] *See* 15 U.S.C 78q(b).

[300] An applicant can request that the Commission keep this information confidential. *See* 17 CFR 200.80 and 17 CFR 200.83.

[301] 15 U.S.C. 78o–7(k).

[302] *Id.*

[303] 15 U.S.C. 78o–7(d).

[304] *Id.*

[305] 15 U.S.C. 78o–7(b)(1).

[306] An applicant can request that the Commission keep this information confidential. *See* 17 CFR 200.80 and 17 CFR 200.83.

[307] 15 U.S.C. 78o–7(a)(3).

[308] The Commission notes that some NRSROs may have fiscal year ends that are not on December 31. Therefore, if the Commission required that this financial information be updated through furnishing Form NRSROs, these entities would not be able to furnish the update with their annual certifications, which—pursuant to Section 15E(b)(2) of the Exchange Act (15 U.S.C. 78o–7(b)(2))—must be furnished on a *calendar* year basis.

[309] *See* 15 U.S.C. 78o–7(k).

statements not be subject to the audit requirement.[310] The comments stated generally that obtaining an audit of the information in the proposed schedules would be difficult and unduly expensive. After consideration of these comments, the Commission has modified Rule 17g–3 to eliminate the requirement that the information that would have been provided in the schedules be audited. This will lessen the burden of preparing the information for submission to the Commission. Moreover, Rule 17g–3 no longer requires that this information be submitted in schedules to the NRSRO's financial statements. Instead, the information must be furnished in separate financial reports. This is intended to clarify that the independent auditor that certifies the NRSRO's financial statements is not required to include the other unaudited financial reports in the opinion covering the financial statements.

As noted above, Rule 17g–3 requires that the financial reports be furnished within 90 days after the end of the NRSRO's fiscal year. One commenter requested that the period be lengthened to 120 days for non-resident NRSROs.[311] The Commission notes that paragraph (c) of Rule 17g–3 provides a mechanism for an NRSRO to seek an extension of the time to furnish the financial reports. An NRSRO that cannot provide its financial reports within 90 days will be able to request an extension under this provision. Therefore, the Commission does not believe it is necessary to create a different standard for non-resident NRSROs, particularly since Rule 17g–3 has been modified to make the preparation of the financial reports less burdensome.

a. Paragraph (a)(1): Audited Financial Statements

The first report, required under paragraph (a)(1) of Rule 17g–3, must contain audited financial statements of the NRSRO. Rule 17g–3, as proposed, also required the submission of audited financial statements and, as noted above, certain schedules to the financial statements. The schedules are now separate financial reports that are not required to be audited. Two commenters stated that an NRSRO that is a separately identifiable department or division of a public company should be permitted to furnish audited financial statements of its parent.[312] As noted above with respect to Exhibit 11, the Commission believes that, in this case, the financial statements of the parent provide information from which it can assess the financial resources of the NRSRO. The Commission believes, however, that certain financial information about the NRSRO must be furnished as well. For these reasons, the rule has been modified to permit an NRSRO to furnish audited consolidated financial statements of its parent; however, the NRSRO also will have to furnish unaudited consolidating financial statements under paragraph (a)(2) of Rule 17g–3 discussed below.

The audited financial statements must include a balance sheet, an income statement and statement of cash flows, and a statement of changes in ownership equity. They must be prepared in accordance with generally accepted accounting principles in the jurisdiction where the NRSRO or its parent is incorporated, organized, or has its principal office. Finally, the audited financial statements must be certified by an accountant who is qualified and independent in accordance with 17 CFR 240.210.2–01(a), (b), and (c)(1), (2), (3), (4), (5) and (8). In addition, the accountant must give an opinion on the financial statements in accordance with 17 CFR 210.2–02(a), (b), (c) and (d). The first financial report is how an NRSRO will update the information initially provided in Exhibit 11 of Form NRSRO.

The requirement to have the financial statements audited will provide the Commission with an independent verification that the information in them is presented fairly, in all material respects. The Commission received numerous comments on these audit requirements. Several commenters stated that non-resident NRSROs should be permitted to provide financial statements prepared in accordance with generally accepted accounting principles of the jurisdiction where the NRSRO is incorporated or has its principal place of business.[313] The commenters stated that preparing them according U.S. generally accepted accounting principles could be very expensive.[314] Similarly, several commenters stated that complying with certain provisions of Regulation S–X (17 CFR 210.1–01—12–29) would be unduly burdensome for non-resident NRSROs and non-reporting companies.[315]

The Commission notes that the financial statements will be prepared to assist the Commission in carrying out its oversight responsibilities with respect to monitoring the financial resources of NRSROs and not as a disclosure item for public consumption. The Commission staff will have the opportunity to discuss the financial statements with a non-resident NRSRO to gain an understanding of any material divergences from U.S. generally accepted accounting principles. Accordingly, the Commission believes that it is appropriate to permit the financial statements to be prepared in accordance with generally accepted accounting principles in the jurisdiction where the NRSRO or its parent is incorporated, organized, or has its principal office. This will lessen the burden for non-resident NRSROs and still provide the Commission with the financial information necessary to carry out its oversight responsibilities.

For these reasons, the Commission also agrees that applying many provisions of Regulation S–X would be unnecessary and, therefore, has eliminated most of this requirement from the rule. The Commission does believe that certain provisions of Regulation S–X relating to the qualifications and independence of the auditor and the auditor's attestation and the scope of the auditor's opinion are appropriate for all NRSROs, including non-residents and non-public companies. Consequently, Rule 17g–2, as adopted, eliminates the proposed requirement to comply with all the provisions of Regulation S–X. Instead, the rule requires the auditor to be qualified and independent in accordance with 17 CFR 240.210.2–01(a), (b), and (c)(1), (2), (3), (4), (5) and (8).[316] These provisions are designed to ensure that auditors are independent of their audit clients.[317] In addition, the accountant must give an opinion on the financial statements in accordance with 17 CFR 210.2–02(a), (b), (c) and (d). The retained provisions of Regulation S–X are appropriate for any audit as they relate to general standards of competence, independence, and audit work and are not specifically designed for public companies. Accordingly, the audited financial statements in Rule 17g–3 must be prepared in accordance with them.

[310] *See* DBRS Letter; A.M. Best Letter; Fitch Letter; AEI Letter; Moody's Letter.

[311] *See* R&I Letter.

[312] *See* S&P Letter; Moody's Letter.

[313] *See* Letter dated March 12, 2007 from Makoto Utsumi, President & CEO, Japan Credit Rating Agency, Ltd. (''JCR Letter''); R&I Letter; DBRS Letter.

[314] *Id.*

[315] *See* JCR Letter; R&I Letter; DBRS Letter; Fitch Letter.

[316] The Commission notes NRSROs that furnish consolidated audited financial statements of parents that are public companies should furnish those statements as they are prepared in accordance with all applicable reporting requirements for public companies, which may include adhering to all provisions of Regulation S–X.

[317] *See Final Rule: Strengthening the Commission's Rules Regarding Auditor Independence*, Securities Act Release No. 8183 (January 28, 2003), 68 FR 6005 (February 5, 2003).

As noted with respect to Exhibit 11, two commenters also requested that the proposed rule be modified to permit an NRSRO to furnish a tax return prepared by an accountant in lieu of audited financial statements.[318] One of the commenters suggested that this lesser requirement only apply to smaller entities (less than $5 to $10 million in asset size) and could be augmented with a requirement to include with the tax return a balance sheet and income statement signed by an accountant.[319]

As discussed with respect to Exhibit 11, the Commission does not believe a tax return will provide sufficient information. Further, the Commission notes that the financial responsibility rules for broker-dealers require audited financial statements for small broker-dealers with a minimum capital requirement of $5,000.[320] The accountants performing an audit of a small NRSRO will tailor the audit and audit report to the size and complexity of the entity's business. This will keep costs for smaller NRSROs lower. This is especially true in light of the changes discussed above with respect to eliminating requirements with respect to Regulation S–X and the proposed requirement that the information proposed for the schedules be audited. Moreover, in response to the second commenter, it is unclear to the Commission in what capacity an accountant would sign financial statements short of performing an audit of them. For the purposes of Rule 17g–3, the Commission believes that the only appropriate review of the financial statements is an audit by an independent accountant. The audit, as noted above, is designed to provide a reasonable level of assurance that the financial statements are free of material misstatement.

The Commission believes that the annual audit will be integral to its ability to effectively monitor the financial resources of an NRSRO as required under Section 15E(d) of the Exchange Act, since it provides an independent verification of an NRSRO's financial condition. For these reasons, Rule 17g–3, as adopted, requires audited financial statements on an annual basis.[321]

Finally, one commenter suggested that the requirement that the audited financial statements be ''certified'' by the accountant is inconsistent with accounting practice because financial statements are either ''audited'' or ''certified.''[322] The Commission notes that the authority to require that an auditor ''certify'' the audited financial statements is set forth in Section 15E(k) of the Exchange Act.[323] Moreover, this provision is consistent with other Commission financial reporting requirements.[324] Consequently, the final rule retains the provision.

b. Paragraph (a)(2): Consolidating Financial Statements

As adopted, paragraph (a)(2) of Rule 17g–3 requires an NRSRO furnishing audited consolidated financial statements of its parent to furnish a second report containing unaudited consolidating financial statements of its parent that include the NRSRO. This will provide the Commission with information about the financial condition of the NRSRO as distinct from the financial condition of its parent. One commenter requested that this information not be subject to the audit requirement if the audited consolidated statements include operating segment reporting in accordance with Regulation S–X.[325] As noted above, this financial report is not required to be audited.

c. Paragraph (a)(3): Revenue Information

The third report, required under paragraph (a)(3) of Rule 17g–3, must contain the following unaudited information about the NRSRO's revenues: (1) Revenue from determining and maintaining credit ratings; (2) revenue from subscribers; (3) revenue from granting licenses or rights to publish credit ratings; and (4) revenue from all other services and products offered by the NRSRO. This financial report will be how an NRSRO updates the information initially provided in Exhibit 12 to Form NRSRO. This information would have been required in the first schedule to the financial statements required under Rule 17g–3, as proposed.

This information will augment the audited financial statements by providing detail as to the revenues generated specifically from credit rating services. The revenue information will assist the Commission in monitoring whether an NRSRO maintains adequate financial resources to consistently produce credit ratings with integrity.[326] As discussed with respect to Exhibit 12, one commenter requested the elimination of a requirement in the proposed rule to separately report revenues from determining private credit ratings (*i.e.*, credit ratings that are not made readily accessible to the public).[327] The commenter stated that it would be difficult to separate private ratings revenue from public ratings revenue. The Commission agrees and the requirement to separately itemize private ratings revenue has been eliminated. This revenue must be included in the revenue item for determining or maintaining credit ratings.

The Commission is adopting this provision with the modifications discussed above.

d. Paragraph (a)(4): Credit Analyst Compensation

The fourth report, required under paragraph (a)(4) of Rule 17g–3, must contain the total aggregate and median annual compensation of the NRSRO's credit analysts. The information in this report is not required to be audited. This financial report will be how an NRSRO updates the information initially provided in Exhibit 13 to Form NRSRO. This information would have been required in the second schedule to the financial statements required under Rule 17g–3, as proposed.

The information on analyst compensation will augment the audited financial statements by providing detail as to expenses necessary to retain the credit rating agency's credit analysts. This information collectively will assist the Commission in monitoring whether an NRSRO maintains adequate financial resources to consistently produce credit ratings with integrity.[328] As discussed with respect to Exhibit 13, one commenter requested that the Commission clarify how an NRSRO should treat deferred compensation.[329] The Commission believes an NRSRO should have the flexibility to include or exclude deferred compensation in making the calculation. If deferred compensation is excluded, the rule requires the NRSRO to make a note of that fact in the financial report. The Commission also believes that an NRSRO must be consistent in its approach of either including or excluding deferred compensation.

The Commission is adopting this provision with the modifications discussed above.

[318] *See* EJR Letter; LACE Letter.

[319] *See* LACE Letter.

[320] *See* 17 CFR 240.17a–5.

[321] 15 U.S.C. 78o–7(d).

[322] *See* DBRS Letter.

[323] 15 U.S.C. 78o–7(k).

[324] *See*, *e.g.*, Section 13(a) of the Exchange Act (15 U.S.C. 78m(a)) and the rules thereunder; Section 17 of the Exchange Act (15 U.S.C. 78q).

[325] *See* Moody's Letter.

[326] 15 U.S.C. 78o–7(d).

[327] *See* Fitch Letter.

[328] 15 U.S.C. 78o–7(d).

[329] *See* Fitch Letter.

e. Paragraph (a)(5): List of Large Customers

The fifth report, required under paragraph (a)(5) of Rule 17g–3, must contain a list of the NRSRO's 20 largest issuer and subscriber customers in terms of net revenue earned from the customers and, include in the list, any obligor or underwriter customers that are as large as or larger than the 20th largest issuer or subscriber customer. The information in this report is not required to be audited. This financial report will be the mechanism that an NRSRO uses to update the information initially provided in Exhibit 10 to Form NRSRO. This information would have been required in the third schedule to the financial statements required under Rule 17g–3, as proposed.

The largest customers will be determined applying the same definitions of ''net revenues'' and ''credit rating services'' used for Exhibit 10, including the changes to those definitions discussed above with respect to Exhibit 10. In addition, just as with Exhibit 10, obligor and underwriter customers must be added to the list to the extent they are as large as, or larger than, the 20th largest issuer or subscriber customer.

The list will assist the Commission in identifying conflicts arising from any influence a person may have on the NRSRO given the amount of revenue the person provides the credit rating agency.

2. Paragraph (b) of Rule 17g–3

Paragraph (b) of Rule 17g–3 requires that the NRSRO attach to each financial report provided under paragraph (a) a statement by a duly authorized person of the NRSRO that the information in the report presents fairly, in all material respects and as applicable, the financial condition, results of operations, income, cash flows, revenues, and analyst compensation of the NRSRO. This information will provide a level of assurance that the information in the financial reports has been reviewed by the NRSRO. Further, the requirement parallels Commission Rule 17a–5(e)(2), which requires a duly authorized officer of a broker-dealer (or, in the case of a general partnership, the general partner) to attach an oath or affirmation stating the financial statements and schedules required under that rule are true and correct.[330] This requirement was proposed in paragraph (c) of Rule 17g–3.

One commenter suggested that the Commission eliminate this requirement because it was unnecessary given the NRSRO's legal exposure for furnishing an inaccurate report.[331] The commenter stated that the requirement could dissuade a credit rating agency from registering with the Commission. The Commission believes it is important that a person within the NRSRO be responsible for reviewing the information in the financial reports and stating that they are a fair representation of its financial condition, results of operations, income, cash flows, revenues, and analyst compensation. This provision is designed to enhance the accuracy of these reports insomuch as the individual within the NRSRO will perform some level of due diligence before executing the statements. Moreover, since only the information in the first financial report will be audited, the Commission believes a person within the NRSRO must be responsible for the information in all the reports. For these reasons, the Commission is retaining the requirement in the final rule.

3. Paragraph (c) of Rule 17g–3

Paragraph (c) of Rule 17g–3 provides that the Commission may grant an extension of time or exemption from any requirements in the rule either unconditionally or on specified terms and conditions on the written request of an NRSRO, if the Commission finds that such extension or exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. This provision was proposed in paragraph (d) of Rule 17g–3. The Commission did not receive any comments on this provision and is adopting it substantially as proposed.

E. Rule 17g–4—Procedures To Prevent the Misuse of Material, Nonpublic Information

Rule 17g–4 will require an NRSRO to establish procedures to address three areas where material, nonpublic information could be inappropriately disclosed or used. Section 15E(g)(1) of the Exchange Act[332] requires an NRSRO to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information in violation of the Exchange Act.[333] Section 15E(g)(2) of the Exchange Act provides that the Commission shall adopt rules requiring an NRSRO to establish specific policies and procedures reasonably designed to prevent the misuse of material, nonpublic information.[334]

1. Paragraph (a)(1) of Rule 17g–4

Paragraph (a)(1) of Rule 17g–4 requires procedures reasonably designed to prevent the inappropriate dissemination within and outside the NRSRO of material nonpublic information obtained for the purpose of developing a credit rating. Some credit rating agencies, as part of their analysis, contact senior management of the obligors and issuers subject to their credit ratings. In the course of these contacts, an issuer or obligor may provide the credit rating agency with nonpublic information including contemplated business transactions or estimated financial projections.[335] Credit rating agencies have commented that this confidential information greatly assists them in issuing credible and reliable ratings.[336] In fact, the Commission's Regulation FD, which governs the disclosure of material, nonpublic information by issuers, contains an exception that permits issuers to intentionally disclose such information to a credit rating agency without making a simultaneous public disclosure of the information.[337] The selective disclosure to the credit rating agency, however, must be solely for the purpose of developing a publicly available credit rating.[338]

One concern that has been raised in the past is that subscribers to a credit rating agency's more detailed credit reports also may be granted direct access to the credit analysts.[339] If the credit analyst is in possession of material, nonpublic information, there is a risk the information may be inappropriately disclosed to the subscriber during the course of communications with the credit analyst.[340]

The rule does not prescribe specific procedures that must be established. Therefore, NRSROs will have flexibility to develop procedures tailored to their organizational structures and business

[330] 17 CFR 240.17a–5(e)(2).

[331] *See* A.M. Best Letter.

[332] 15 U.S.C. 78o–7(g)(1).

[333] 15 U.S.C. 78a *et seq.*

[334] 15 U.S.C. 78o–7(g)(2).

[335] *See Proposed Rule: Definition of Nationally Recognized Statistical Rating Organization*, Securities Act Release No. 8570 (April 19, 2005), 70 FR 21306 (April 25, 2005).

[336] *Id.*

[337] *See* 17 CFR 243.100.

[338] 17 CFR 243.100(b)(2)(iii).

[339] *See* Commission 2003 CRA Report and Commission 2003 Concept Release, Securities Act Release No. 8236 (June 4, 2003), 68 FR 35258 (June 12, 2003), noting the concern raised by some that subscribers may have preferential access to credit analysts and, as a result, may inappropriately learn material nonpublic information in the possession of a credit analyst.

[340] *Id.*

models. An NRSRO may have procedures requiring credit analysts to receive training in the laws governing the misuse of material, nonpublic information; defining the persons within the NRSRO with whom the credit analyst can share the information; prohibiting the credit analyst from disclosing the information to any other persons; and requiring the credit analyst to take steps to safeguard documents containing the information. An NRSRO that does not use management contacts as part of its methodology for determining credit ratings may prohibit credit analysts from contacting rated issuers or obligors.

The Commission received one comment on this provision.[341] The commenter stated that an NRSRO should be permitted to disclose material, nonpublic information in aggregate form (*e.g.*, through usage in models) in a manner that does not identify individual issuers.[342] The Commission notes, however, that the rule, by itself, does not expressly prohibit any types of disclosures. As discussed above, Section 15E(g)(1) of the Exchange Act[343] requires an NRSRO to establish, maintain, and enforce written policies and procedures to prevent the misuse of material, nonpublic information in violation of the Exchange Act and the rules thereunder.[344] Rule 17g–4 requires an NRSRO to address the inappropriate disclosure of material, nonpublic information when establishing these procedures required by statute.

For these reasons, the Commission is adopting paragraph (a)(1) of Rule 17g–4 substantially as proposed.

2. Paragraph (a)(2) of Rule 17g–4

Paragraph (a)(2) of Rule 17g–4 requires procedures reasonably designed to prevent a person within the NRSRO from purchasing, selling, or otherwise benefiting from any transaction in securities or money market instruments when the person is aware of material, nonpublic information obtained for the purpose of developing a credit rating. This provision requires an NRSRO to address the risk that individuals in possession of material, nonpublic information about an issuer or obligor may trade securities or money market instruments on the information.[345]

As with paragraph (a), the provision does not prescribe specific procedures that must be established. An NRSRO may have policies prohibiting persons within the NRSRO from purchasing or selling a security or money market instrument that is subject to a pending credit rating action; requiring persons within the NRSRO to obtain pre-approval before purchasing or selling a security or money market instrument; or requiring persons within the NRSRO to be notified of securities or money market instruments that are on a ''do not trade'' list.

The Commission made three modifications to the provision, as proposed, to address comments. The Commission believes the commenters identified areas where the provision could cause some practical difficulties in designing procedures. The changes are designed to remove these impediments.

First, the Commission deleted a reference in the provision to members of the household of an NRSRO employee. This change was made in response to a comment that it would be difficult to design procedures addressing the trading activities of household members since a household may include persons that the employee has no influence over, such as roommates.[346] The commenter further noted that procedures designed to prevent an employee ''from otherwise benefiting'' from the use of material non-public information would cover an employee's immediate family members.[347]

Second, the Commission replaced a reference in the provision to an employee ''possess[ing]'' or having ''access'' to material, non-public information. The provision, as adopted, refers to an employee being ''aware'' of material, nonpublic information. This change was made in response to a comment that having ''access'' to material, nonpublic information could be interpreted very broadly, which would make designing procedures to address the issue difficult.[348] The commenter also noted that Commission Rule 10b5–1, which concerns trading on the basis of material, nonpublic information in insider trading cases, refers to being ''aware'' of material, nonpublic information.[349]

The third modification narrowed the scope of the provision to ''persons within'' the NRSRO. As proposed, the provision would have required procedures designed to prevent persons ''associated'' with the NRSRO from trading on material, nonpublic information. A commenter stated that this made the provision overly broad since the definition of persons ''associated'' with an NRSRO in Section 3(a)(63) of the Exchange Act includes employees of affiliates engaged in activities wholly unrelated to credit rating services.[350] Similar to Item 8 of Form NRSRO (statutory disclosures) and, as discussed next, Rule 17g–5, the Commission is narrowing the scope of this provision to persons ''within'' the NRSRO. Paragraph (b) of Rule 17g–4 defines a person ''within'' the NRSRO to mean the NRSRO, its credit rating affiliates identified on Form NRSRO, and any partner, officer, director, branch manager, and employee of the NRSRO or its credit rating affiliates (or any person occupying a similar status or performing similar functions).

Finally, a commenter stated that the provision should not apply to indirect trading in securities such as through transactions in mutual funds.[351] The Commission notes that the rule by itself does not expressly prohibit any types of transactions. As discussed above, Section 15E(g)(1) of the Exchange Act[352] requires an NRSRO to establish, maintain, and enforce written policies and procedures to prevent the misuse of material, nonpublic information in violation of the Exchange Act and the rules thereunder.[353] Rule 17g–4 requires an NRSRO to address the inappropriate use of material, nonpublic information when establishing these procedures required by statute.

For these reasons, paragraph (a)(2) of Rule 17g–4 is being adopted with the modifications described above.

3. Paragraph (a)(3) of Rule 17g–4

Paragraph (a)(3) of Rule 17g–4 requires procedures reasonably designed to prevent the inappropriate dissemination within and outside the NRSRO of a credit rating action before issuing the credit rating on the Internet or through another readily accessible means. This provision recognizes that a credit rating action of an NRSRO may be material, nonpublic information. Consequently, an NRSRO must have policies designed to ensure that its pending credit rating actions are not selectively disclosed before the credit rating is issued on the Internet or

[341] *See* S&P Letter.

[342] *Id.*

[343] 15 U.S.C. 78o–7(g)(1).

[344] 15 U.S.C. 78a *et seq.*

[345] *See, e.g.*, Commission complaint in *Commission v. Rick A. Marano, William Marano and Carl Loizzi*, 04 CV 5828 (Judge Kimba Wood) (S.D.N.Y.); *see also* Commission Litigation Release No. 18799 (July 27, 2004).

[346] *See* S&P Letter.

[347] *Id.*

[348] *See* Moody's Letter.

[349] *See* 17 CFR 240.10b5–1.

[350] *See* Moody's Letter.

[351] *See* Moody's Letter.

[352] 15 U.S.C. 78o–7(g)(1).

[353] 15 U.S.C. 78a *et seq.*

through another readily accessible means.

As with paragraphs (a)(1) and (a)(2), paragraph (a)(3) does not prescribe specific procedures. However, as applicable to the business model of the NRSRO, these policies may include procedures designed to ensure that a credit rating action is issued in a way that makes it readily accessible to the market place, such as posting the credit rating or an announcement of the credit rating action on the NRSRO's Web site or through a news or information service used by market participants or by making it available to all subscribers simultaneously. The policies also may include procedures prohibiting credit analysts from selectively disclosing the pending action to persons outside the NRSRO and to persons inside the NRSRO who do not need to know of the pending action.

At the same time, some credit rating agencies, as part of their methodologies for determining credit ratings, will discuss a proposed credit rating action with the management of the issuer or obligor being rated to solicit their views or provide an opportunity to appeal the decision. NRSROs engaging in this practice must have procedures reasonably designed to ensure that the discussions with the issuer or obligor do not lead to the selective disclosure of the information to persons other than those persons within the issuer or obligor who are authorized to receive the information.

For these reasons, the Commission is adopting paragraph (a)(3) of Rule 17g–4 substantially as proposed.

4. Paragraph (b) of Rule 17g–4

As discussed above with respect to paragraph (a)(2) of Rule 17g–4, paragraph (b) of Rule 17g–4 contains the definition of a person ''within'' the NRSRO. The definition narrows the scope of the paragraph (a)(2) to persons involved in credit rating activities.

F. Proposed Rule 17g–5—Management of Conflicts of Interest

Section 15E(h)(1) of the Exchange Act requires an NRSRO to establish, maintain, and enforce policies and procedures reasonably designed, taking into consideration the nature of its business, to address and manage conflicts of interest.[354] Section 15E(h)(2) of the Exchange Act requires the Commission to adopt rules to prohibit or require the management and disclosure of conflicts of interest relating to the issuance of credit ratings.[355] The statute also identifies certain types of conflicts relating to the issuance of credit ratings that the Commission may include in its rules.[356] It also contains a catchall provision for any other potential conflict of interest the Commission deems is necessary or appropriate in the public interest or for the protection of investors to include in its rules.[357] Rule 17g–5 implements these statutory provisions by prohibiting the conflicts identified in the statute and certain additional conflicts either outright or if the NRSRO has not disclosed them and established policies and procedures to manage them.

1. Paragraph (a) of Rule 17g–5

Paragraph (a) of Rule 17g–5 prohibits a person within an NRSRO from having a conflict of interest relating to the issuance of a credit rating that is identified in paragraph (b) of the rule *unless* the NRSRO has disclosed the type of conflict of interest in compliance with Rule 17g–1 (*i.e.*, in Exhibit 6 to Form NRSRO) and has implemented policies and procedures to address and manage the type of conflict of interest in accordance with Section 15E(h)(1) of the Exchange Act.[358] Paragraph (d) of Rule 17g–5 defines a person within an NRSRO. The Commission believes that these prohibitions are appropriate in the public interest and for the protection of investors because they are designed to ensure that users of credit ratings are made aware of the potential conflicts of interest that arise from an NRSRO's business activities and that an NRSRO establishes policies and procedures for managing the specific conflicts it identifies.

This provision, as proposed, would have made it ''unlawful'' for an NRSRO to have a conflict in these circumstances. As adopted, paragraph (a) ''prohibits'' an NRSRO from having the conflict. The Commission adopted this change to make the rule text more consistent with the Section 15E(h)(2) of the Exchange Act, which provides the Commission with authority to ''prohibit, or require the management and disclosure of'' conflicts of interest.[359]

For these reasons, the Commission is adopting paragraph (a) of Rule 17g–5 substantially as proposed with the modification described above.

2. Paragraph (b) of Rule 17g–5

The types of conflicts identified in paragraph (b) of Rule 17g–5 are the same conflicts listed in the instructions to Exhibit 6 of Form NRSRO.[360] These are the types of conflicts that commonly arise from the business of providing credit rating services. Prohibiting these types of conflicts outright may adversely impact the ability of an NRSRO to operate as a credit rating agency. Nonetheless, the conflicts must be managed through policies and procedures and disclosed so that users of the credit ratings can assess whether the conflict impacts the NRSRO's judgment.

Paragraph (b), as adopted, has been restructured from the proposed version of the rule. For example, certain conflicts are now identified in separate paragraphs as opposed to a single paragraph.[361] The Commission's intent is to provide greater clarity to the descriptions of the types of conflicts and, as noted above, to have them track the conflicts described in Exhibit 6 to Form NRSRO. As discussed below, the conflicts identified in paragraph (b) of Rule 17g–5 are substantially the same conflicts identified in the paragraph as proposed; though they have been refined to address comments. The one exception is the conflict identified in paragraph (b)(5) of Rule 17g–5, which—as discussed below—the Commission added in response to a comment identifying it as a potential conflict.

a. Paragraph (b)(1) Rule 17g–5

The conflict identified in paragraph (b)(1) of Rule 17g–5 involves being paid by an issuer or underwriter to determine credit ratings with respect to securities or money market instruments they issue or underwrite. The Commission believes the inclusion of this conflict in the rule is necessary or appropriate in the public interest or for the protection of investors. The concern is that an NRSRO may be influenced to issue a more favorable credit rating than warranted in order to obtain or retain the business of the issuer or underwriter. The Commission did not receive any comments on prohibiting this type of conflict unless it is disclosed and managed as required pursuant to Section 15E of the Exchange Act[362] and Rule 17g–1 and is adopting the requirement substantially as proposed.

[354] 15 U.S.C. 78o–7(h)(1).

[355] 15 U.S.C. 78o–7(h)(2).

[356] *See* 15 U.S.C. 78o–7(h)(2)(A)–(D).

[357] *See* 15 U.S.C. 78o–7(h)(2)(E).

[358] 15 U.S.C. 78o–7(h)(1).

[359] 15 U.S.C. 78o–7(h)(2); *see also* R&I Letter.

[360] *See* DBRS Letter proposing that the conflicts identified in Exhibit 6 and Rule 17g–5 better track one another.

[361] For example, the conflicts identified in paragraphs (b)(1), (2) and (3) were all identified in paragraph (b)(1) of the proposed rule.

[362] 15 U.S.C. 78o–7.

b. Paragraph (b)(2) of Rule 17g–5

The conflict identified in paragraph (b)(2) of Rule 17g–5 involves being paid by an obligor to determine a credit rating of the obligor as an entity. This conflict is identified in Section 15E(h)(2)(A) of the Exchange Act.[363] This business practice raises the same concerns as being paid by an issuer or underwriter to determine a credit rating on a security or money market instrument. The Commission did not receive any comments on prohibiting this type of conflict unless it is disclosed and managed as required pursuant to Section 15E of the Exchange Act[364] and Rule 17g–1 and is adopting the requirement substantially as proposed.

c. Paragraph (b)(3) of Rule 17g–5

The conflict identified in paragraph (b)(3) of Rule 17g–5 involves being paid by issuers, underwriters, or obligors for ancillary services when they also have paid for a credit rating. This conflict as it relates to obligors is identified in Section 15E(h)(2)(B) of the Exchange Act.[365] The Commission believes the inclusion of this conflict in the rule as it relates to issuers and underwriters is necessary or appropriate in the public interest or for the protection of investors. The concern with respect to all of these types of entities is that the NRSRO may issue a more favorable than warranted credit rating in order to obtain business from them for the ancillary services.[366] The Commission did not receive any comments on the requirement that this type of conflict be prohibited unless it is disclosed and managed as required pursuant to Section 15E of the Exchange Act[367] and Rule 17g–1 and is adopting the requirement substantially as proposed.

d. Paragraph (b)(4) of Rule 17g–5

The conflict identified in paragraph (b)(4) of Rule 17g–5 involves being paid by subscribers for access to credit ratings and for other credit ratings services where such subscribers may use the credit ratings to comply with, and obtain benefits or relief under, statutes and regulations using the term ''nationally recognized statistical rating organization.'' The Commission believes the inclusion of this conflict in the rule is necessary or appropriate in the public interest or for the protection of investors. The concern is that a subscriber potentially could be subject to one or more of these statutes and regulations and, consequently, benefit depending on how the NRSRO rates the subscriber, or securities held or issued by the subscriber. A broker-dealer subscriber holding debt securities is able to apply lower haircuts when computing its net capital under Exchange Act Rule 15c3–1 if the securities are rated investment grade by two NRSROs.[368] Broker-dealers frequently subscribe to receive credit analysis or other services from credit rating agencies.

As noted with respect to Exhibit 6 to Form NRSRO, several commenters raised a concern with the identification of this conflict because, as proposed, it could have been construed to require an NRSRO to affirmatively ascertain whether, and how, its subscribers were using its credit ratings.[369] For this reason, the Commission has modified the description in Exhibit 6 and Rule 17g–5 to make it generally applicable to any subscriber, since any subscriber potentially could be a user of credit ratings for regulatory purposes. Consequently, an NRSRO that has subscribers will be required to make the disclosure in Exhibit 6 and have a policy and procedure to address the conflict.

The Commission notes, however, that Rule 17g–5 does not prescribe any specific policies and procedures to address conflicts of interest. The Commission does not expect that an NRSRO will be required to affirmatively ascertain whether, and how, its subscribers were using its credit ratings to manage this conflict. General policies and procedures designed to keep persons within the NRSRO who participate in the determination of credit ratings free of the undue influence of all persons who pay the NRSRO for credit rating services (*e.g.*, issuers, underwriters, obligors, and subscribers) will be a way of addressing this conflict.

For these reasons, the Commission is adopting the requirement with the modifications discussed above.

e. Paragraph (b)(5) of Rule 17g–5

The conflict identified in paragraph (b)(5) of Rule 17g–5 involves being paid by subscribers that also may own investments or have entered into transactions that could be favorably or adversely impacted by a credit rating issued by the nationally recognized statistical rating organization. As discussed with respect to Exhibit 6, this conflict was added in response to a commenter who pointed out that subscribers who manage investment portfolios also may have interests in a particular credit rating.[370] The Commission believes the inclusion of this conflict in the rule is necessary or appropriate in the public interest or for the protection of investors. The Commission believes the commenter identified a conflict that should be disclosed and managed because certain large investors that may derive benefits from the issuance of a particular credit rating could provide a credit rating agency with substantial revenues for credit rating services. As with potential regulatory users, the Commission does not expect that an NRSRO will be required to affirmatively ascertain how the investment portfolios of its subscribers would be impacted by a pending credit rating. General policies and procedures designed to keep persons within the NRSRO who participate in the determination of credit ratings free of the undue influence of clients will be a way of addressing this conflict.

For these reasons, the Commission is adding this conflict to the conflicts identified in paragraph (b) of Rule 17g–5.

f. Paragraph (b)(6) of Rule 17g–5

The conflict identified in paragraph (b)(6) of Rule 17g–5 involves allowing persons within the NRSRO to own directly securities or money market instruments of, or having any other direct ownership interests in, issuers or obligors subject to a credit rating determined by the NRSRO.[371] This conflict as it relates to obligors is identified in Section 15E(h)(2)(C) of the Exchange Act.[372] The Commission believes the inclusion of this conflict in the rule as it relates to issuers is necessary or appropriate in the public interest or for the protection of

[363] 15 U.S.C. 78o–7(h)(2)(A).

[364] 15 U.S.C. 78o–7.

[365] 15 U.S.C. 78o–7(h)(2)(B).

[366] *See* Commission 2003 CRA Report noting concerns of some that conflicts in this area could become much greater if these ancillary services were to become a substantial portion of an NRSRO's business. *See also* Commission 2003 CRA Concept Release, Securities Act Release No. 8236 (June 4, 2003), 68 FR 35258 (June 12, 2003), noting concerns of some that greater concerns about conflicts of interest that arise when a credit rating agency offers consulting or other advisory services to issuers it rates.

[367] 15 U.S.C. 78o–7.

[368] *See* 17 CFR 240.15c3–1(c)(2)(vi)(E), (F), and (H).

[369] *See* DBRS Letter; S&P Letter; Moody's Letter.

[370] *See* DBRS Letter.

[371] *See Proposed Rule: Definition of Nationally Recognized Statistical Rating Organization*, Securities Act Release No. 8570 (April 19, 2005), 70 FR 21306 (April 25, 2005), which noted that conflicts may arise when a person associated with a credit rating agency also is associated with, or has an interest in, an issuer that is being rated.

[372] 15 U.S.C. 78o–7(h)(2)(C).

investors. The concern is that allowing persons within the NRSRO, even if they are not directly involved in determining the credit rating, to own securities of an issuer or obligor subject to a credit rating could lead to situations where they seek to influence a credit analyst to issue a credit rating favorable to their trading position.[373] For example, a manager or supervisor may be in a position to exert undue influence on a credit analyst.

The Commission, however, does not believe this conflict should be prohibited for employees that have no involvement in determining or approving the credit rating. They should be able to own securities or money market instruments of an issuer or obligor subject to a credit rating issued by the NRSRO, provided the practice is disclosed and managed.[374] A prohibition against owning any rated securities may be a particular hardship for the employees of an NRSRO that issues credit ratings with respect to most public companies.

The Commission has modified the description of the conflict so it now involves ''allowing'' persons within the NRSRO to have these ownership interests. This is intended to clarify that the conflict does not arise only when these persons actually have such an ownership interest. This distinction is intended to simplify the rule. Specifically, as proposed, the rule could have been construed as requiring an NRSRO to affirmatively determine if, and when, an employee purchased a rated security. The rule, as adopted, only requires the NRSRO to disclose that it allows persons within the NRSRO to have these direct ownership interests in rated securities.

Finally, two commenters noted that indirect ownership of rated securities—such as through mutual funds and blind trusts—should not be within the scope of the provision.[375] The Commission believes that indirect ownership of rated securities by employees does not present the same concerns as direct ownership, since an indirect ownership interest implies the investor does not have control over the decision to purchase or sell a specific security. Therefore, the provision specifically references ''direct'' ownership. The Commission also believes that an NRSRO must have flexibility to define through its policies and procedures when an ownership interest would not be ''direct'' for the purposes of this provision.

For these reasons, the Commission is adopting the requirement with the modifications described above.

g. Paragraph (b)(7) of Rule 17g–5

The conflict identified in paragraph (b)(7) of Rule 17g–5 involves allowing persons within the NRSRO to have a business relationship that is more than an ordinary course business relationship with an issuer or obligor subject to a credit rating determined by the NRSRO. This conflict as it relates to obligors is identified in Section 15E(h)(2)(C) of the Exchange Act.[376] The Commission believes the inclusion of this conflict in the rule as it relates to issuers is necessary or appropriate in the public interest or for the protection of investors. The concern is that persons within the NRSRO having these types of business relationships may be influenced to determine a favorable credit rating for the entity based on the business relationship or exert improper influence on credit analysts to determine a favorable credit rating. The Commission believes an NRSRO should be required to disclose that it allows these types of relationships and be required to have policies and procedures to manage them. Otherwise, the conflicts should be prohibited.

The Commission notes that in the case of a credit analyst it may be difficult to remain impartial with respect to an issuer or obligor where the credit analyst has a non-ordinary course business relationship with the entity. For example, in the case where the issuer or obligor extends a loan to the credit analyst that has an interest rate far below market rates. However, the Commission believes that NRSROs should have flexibility in designing policies and procedures to address these types of conflicts, in part, because of the difficulty of defining when a business relationship creates too much potential for a loss of impartiality on behalf of the credit analyst or person within the NRSRO. Consequently, the Commission is not prohibiting these conflicts outright.

The Commission is modifying the provision to clarify that it does not apply to ordinary course business relationships such as arms length mortgage loans and bank and credit card accounts. Commenters stated that these types of business relationships do not raise conflict of interest concerns.[377] The Commission agrees that, for example, a credit analyst likely would not be influenced to issue a favorable credit rating simply because the analyst has a bank account at the rated entity. Examples of a non-ordinary course business relationship would be an employee entering into a joint business venture with a rated obligor or, as noted above, obtaining a loan from an obligor with an interest rate far below market rates.

For these reasons, the Commission is adopting the requirement with the modifications discussed above.

h. Paragraph (b)(8) of Rule 17g–5

The conflict identified in paragraph (b)(8) of Rule 17g–5 involves having a person associated with the NRSRO that is a broker or dealer engaged in the business of underwriting securities or money market instruments. This type of conflict is identified in Section 15E(h)(2)(D) of the Exchange Act.[378] The Commission believes the inclusion of this conflict in the rule is necessary or appropriate in the public interest or for the protection of investors. As the Commission discussed with respect to Exhibit 6 of Form NRSRO, an affiliation with a broker or dealer that is in the business of underwriting securities would raise concerns that the NRSRO might be influenced by the affiliation to issue favorable credit ratings for these securities.

This requirement was in paragraph (b)(5) of Rule 17g–5, as proposed. However, the conflict identified was broader in that it referred to ''having any * * * affiliation with * * * an underwriter of securities or money market instruments rated by the [NRSRO].'' As discussed with respect to Exhibit 6, the Commission has narrowed the description of the conflict to address concerns that the requirement, as proposed, could have created a difficult compliance standard by requiring an NRSRO to monitor whether any person associated with the NRSRO is an ''underwriter'' as that term is defined in Section 2(a)(11) of the Securities Act of 1933.[379]

For these reasons, the Commission is adopting the requirement with the modifications discussed above.

i. Paragraph (b)(9) of Rule 17g–5

The conflict referred to in paragraph (b)(9) of Rule 17g–5 is any other type of conflict that the NRSRO identifies on Form NRSRO in compliance with

[373] As discussed below, the NRSRO and a person within the NRSRO who participated in the determination of a credit rating is prohibited from having this conflict under paragraph (c) of Rule 17g–5.

[374] *Cf.* 17 CFR 275.204A–1(e)(1) (defining ''access person'' for purposes of requiring investment advisers to establish procedures requiring access persons to report their personal securities holdings).

[375] *See, e.g.,* S&P Letter; JCR 2nd Letter.

[376] 15 U.S.C. 78o–7(h)(2)(C).

[377] *See, e.g.,* Moody's Letter.

[378] 15 U.S.C. 78o–7(h)(2)(D).

[379] 15 U.S.C. 77b(a)(11).

Section 15E(a)(1)(B)(vi) of the Exchange Act[380] and Rule 17g–1. The Commission believes the inclusion of this provision is necessary or appropriate in the public interest or for the protection of investors. This catchall provision will capture conflicts not specifically listed in the instructions for Exhibit 6 and Rule 17g–5 that the NRSRO has identified on Exhibit 6 to Form NRSRO as arising from its business activities.[381] The Commission did not receive any comments on the proposal that this type of conflict be prohibited unless it is disclosed and managed as required pursuant to Section 15E of the Exchange Act[382] and Rule 17g–1 and is adopting the requirement substantially as proposed.

3. Paragraph (c) of Rule 17g–5

Section 15E(h)(2) of the Exchange Act requires the Commission to adopt rules to prohibit or require the management and disclosure of conflicts of interest relating to the issuance of credit ratings.[383] Paragraph (c) of proposed Rule 17g–5 specifically prohibits outright four types of conflicts of interest. The Commission believes prohibiting these conflicts is necessary or appropriate in the public interest or for the protection of investors. These are conflicts that are not a necessary consequence of how credit rating agencies operate. They would be difficult to manage given the risk that they could cause undue influence. Therefore, the Commission is prohibiting them; rather than requiring they be disclosed and managed. Nonetheless, the Commission intends to monitor how the prohibitions operate in practice and, if it appears a prohibition is interfering inappropriately, the Commission will re-evaluate whether it should be subject to disclosure and management (rather than prohibited).[384]

a. Paragraph (c)(1) of Rule 17g–5

As adopted, paragraph (c)(1) prohibits an NRSRO from having a conflict relating to the issuance of a credit rating where the person soliciting the credit rating was the source of 10% or more of the total net revenue of the NRSRO during the most recently ended fiscal year.[385] Such a person will be in a position to exercise substantial influence on the NRSRO.[386] Consequently, it will be difficult for the NRSRO to remain impartial, given the impact on the NRSRO's income if the person withdrew its business. Given the Commission's understanding that fees from a single entity generally compose a very small percentage of the revenues of entities currently identified as NRSROs, the Commission believes that a 10% threshold is a reasonable threshold for registered NRSROs.[387]

Several commenters stated that this conflict should not be prohibited but rather subject to procedures to manage it.[388] One commenter, while not requesting that the proposal be changed, noted that in an atypical circumstance such as issuing credit ratings for structured products sponsored by a large client an NRSRO may be required to request a waiver of the prohibition.[389] Another commenter also mentioned structured product sponsors as clients that potentially could approach the 10% revenue threshold and, therefore, that exemptive relief may be appropriate in such circumstances.[390] The Commission continues to believe that 10% of net revenues is a very high threshold. Moreover, the definition of net revenues has been narrowed to exclude revenues earned by affiliates that are not persons within the NRSRO. Therefore, the threshold will be higher than that proposed for NRSROs with affiliates engaged in activities unrelated to credit ratings. Consequently, the Commission does not believe the conflict should be subject to a requirement that it be managed (rather than prohibited).

Nonetheless, as noted above, the Commission intends to monitor how the prohibition operates in practice, particularly with respect to structured products. The intent behind all the prohibitions in paragraph (c) is not to prohibit a business practice that is a normal part of an NRSRO's activities. Rather, the intent is to prohibit conflicts that are not a necessary consequence of providing credit rating services. If the prohibition in paragraph (c)(1) interferes with how NRSROs as a matter of course deal with structured product sponsors, the Commission will evaluate whether the rule should be modified to accommodate this business practice or whether—as suggested by the commenter—an exemption would be appropriate.

For these reasons, the Commission is adopting the prohibition substantially as proposed.

b. Paragraph (c)(2) of Rule 17g–5

As adopted, paragraph (c)(2) prohibits an NRSRO from having a conflict relating to the issuance of a credit rating with respect to a person (excluding a sovereign governments nation or an agency of a sovereign nation) where the nationally recognized statistical rating organization, a credit analyst who participated in determining the credit rating, or a person responsible for approving the credit rating, directly owns securities of, or has any other direct ownership interest in, the rated person. This conflict as it relates to obligors is identified in Section 15E(h)(2)(C) of the Exchange Act.[391] The Commission believes prohibiting these conflicts, including with respect to issuers, is necessary or appropriate in the public interest or for the protection of investors. An NRSRO and persons within the NRSRO that participate in the credit rating should not have a direct financial interest in the issuer or obligor subject to the credit rating. It will be difficult for these persons to remain impartial and issue an objective credit rating in this circumstance.[392]

As with the provision in paragraph (b)(6) of Rule 17g–5, the Commission has narrowed the scope of this provision to ''direct'' ownership interests. These persons will be permitted to have indirect ownership interests, for example, through mutual funds or blind trusts. The prohibition also excludes from its scope ownership of securities issued by a sovereign government or an agency of a sovereign government. The Commission added this exclusion in response to a comment that sovereign government and agency securities may be held as cash equivalents.[393] Further, the Commission believes for many of these securities it would be difficult to influence their market price through the issuance of a credit rating. Therefore, a prohibition on a credit analyst owning securities of sovereign governments the

[380] 15 U.S.C. 78o–7(a)(1)(B)(vi).

[381] *See* 15 U.S.C. 78o–7(h)(2)(E).

[382] 15 U.S.C. 78o–7.

[383] 15 U.S.C. 78o–7(h)(2).

[384] *See, e.g.*, S&P Letter stating that all the conflicts identified in paragraph (c) of Rule 17g–5 should not be prohibited as they can be managed.

[385] The determination of ''net revenue'' is same as the determination of net revenue for purposes of Form NRSRO and Rule 17g–3.

[386] As noted in the Commission 2003 CRA Report, some participants in the Commission 2002 CRA Hearings expressed concern that ancillary services could become much greater in the future and suggestions were made that their percentage contribution to total revenue be capped.

[387] As noted in the Commission 2003 CRA Report, fees from any single issuer typically comprise a very small percentage, less than 1%, of an NRSRO's total revenue.

[388] *See* R&I Letter; Fitch Letter; S&P Letter; AEI Letter; Langohr Letter; AST Letter; ASF Letter.

[389] *See* LACE Letter.

[390] *See* R&I Letter.

[391] 15 U.S.C. 78o–7(h)(2)(C).

[392] The Senate Report notes that rating agencies argue that although the pay-for-rating business model presents inherent conflicts of interest, the conflict is effectively managed inasmuch as credit analysts do not benefit financially from any of their ratings decisions. The Senate Report further notes that credit analysts are not permitted to own any of the securities they follow.

[393] *See* S&P Letter.

analyst rates is not necessary. The Commission notes that this ownership interest is subject to the requirements of paragraphs (a) and (b)(6) of Rule 17g–5. Consequently, it will be required to be addressed in the procedures for managing the conflicts that arise from direct ownership of rated securities.

For the reasons, the Commission is adopting the prohibition with the modifications discussed above.

c. Paragraph (c)(3) of Rule 17g–5

Paragraph (c)(3) prohibits an NRSRO from having a conflict relating to the issuance of a credit rating where the rated entity is a person associated with the NRSRO (*i.e.*, a company directly or indirectly controlling, controlled by, or under common control with, the NRSRO).[394] This conflict as it relates to obligors is identified in Section 15E(h)(2)(C) of the Exchange Act.[395] The Commission believes prohibiting this conflict, including with respect to issuers, is necessary or appropriate in the public interest or for the protection of investors. The Commission believes that it is appropriate to prohibit such conflicts because of the degree of difficulty the Commission foresees in maintaining an appropriate level of impartiality, when issuing a credit rating with respect to an affiliated entity.

Two commenters stated that this conflict can be managed and should not be prohibited.[396] The Commission believes that for a credit analyst to determine a credit rating for the company where the analyst works or an affiliate of that company would place the analyst in an untenable position. Moreover, the Commission does not believe there will be a need for such a credit rating as long as other NRSROs are available to determine credit ratings for these companies. The Commission will entertain requests for exemptive relief from this prohibition where appropriate, such as if circumstances develop to a point where an NRSRO or its affiliate requires a public credit rating and cannot obtain one from another NRSRO. For these reasons, the Commission is adopting this prohibition substantially as proposed.

d. Paragraph (c)(4) of Rule 17g–5

Paragraph (c)(4) prohibits an NRSRO from having a conflict relating to the issuance of a credit rating where the credit analyst who participated in determining the credit rating, or a person responsible for approving the credit rating, also is an officer or director of the person that is the subject of the credit rating.[397] This conflict as it relates to obligors is identified in Section 15E(h)(2)(C) of the Exchange Act.[398] The Commission believes prohibiting this conflict, including with respect to issuers, is necessary or appropriate in the public interest or for the protection of investors. The Commission believes that an NRSRO or person associated with the NRSRO having such a position will have difficulty remaining objective in these circumstances.

The Commission did not receive any comments on this specific prohibition and is adopting it substantially as proposed.

F. Rule 17g–6—Prohibited Unfair, Coercive, or Abusive Practices

Section 15E(i)(1) of the Exchange Act[399] provides that the Commission shall adopt rules prohibiting any act or practice by an NRSRO that the Commission determines is unfair, abusive, or coercive, including certain acts and practices set forth in paragraphs (i)(1)(A)–(C) of Section 15E of the Exchange Act.[400] In explaining this statutory provision, the Senate Report stated that ''the Commission, as a threshold consideration, must determine that the practices subject to prohibition under this section are unfair, coercive or abusive before adopting rules prohibiting such practices.''

In the proposing release, the Commission made a preliminary determination that the acts and practices described in paragraphs (i)(1)(A)–(C) of Section 15E of the Exchange Act[401] would be unfair, coercive, or abusive. Consequently, the Commission proposed that they be prohibited through provisions in paragraphs (a)(1) through (a)(4) of Rule 17g–6, with one conditional exception. The Commission also made a preliminary determination in the proposing release that using an unsolicited credit rating to pressure an issuer or obligor into paying for the rating or another service would be unfair, coercive, or abusive. Consequently, the Commission proposed to use its authority under Section 15E(i)(1) of the Exchange Act[402] to prohibit such act and practice through the provisions in paragraph (a)(5) of Rule 17g–6.[403]

1. Paragraph (a)(1) of Rule 17g–6

Section 15E(i)(1)(A) of the Exchange Act provides that the Commission shall prohibit the following practice if the Commission determines it is unfair, coercive, or abusive:

> Conditioning or threatening to condition the issuance of a credit rating on the purchase by the obligor or an affiliate thereof of other services or products, including pre-credit rating assessment products of the nationally recognized statistical rating organization or any person associated with such nationally recognized statistical rating organization[.][404]

In the proposing release, the Commission preliminarily determined that this practice would be unfair, coercive, or abusive. Consequently, the Commission proposed to prohibit it in paragraph (a)(1) of Rule 17g–6. Specifically, this paragraph, as proposed, would have prohibited an NRSRO from conditioning or threatening to condition the issuance of a credit rating on the purchase of other products or services, including pre-credit rating assessment products.[405]

Credit ratings play an important role in the financial markets. Market participants use them in making financial decisions on whether to buy or sell debt securities and extend credit to rated entities. Moreover, credit ratings of NRSROs are used in federal and state laws and regulations to establish limits or confer exemptions or privileges. Consequently, an entity may benefit from having an NRSRO credit rating because the credit rating makes its securities more marketable; or the credit rating qualifies the entity for an exemption or privilege or makes holding the entity's debt securities or transacting with the entity more attractive to other regulated entities. An NRSRO could abuse this incentive by using it to coerce an issuer or obligor to purchase services from the NRSRO or its affiliates.

[394] *See* Section 3(a)(63) of the Exchange Act (15 U.S.C. 78c(a)(63)) defining ''person associated with an NRSRO.''

[395] 15 U.S.C. 78o–7(h)(2)(C).

[396] *See* Moody's Letter; S&P Letter.

[397] *Cf.* Rule 2711 of the National Association of Securities Dealers, Inc. (''NASD'') allowing a securities research analyst to be an officer or director of a subject company if proper disclosure is made.

[398] 15 U.S.C. 78o–7(h)(2)(C).

[399] 15 U.S.C. 78o–7(i)(1).

[400] 15 U.S.C. 78o–7(i)(1)(A), (B) and (C).

[401] *Id.*

[402] 15 U.S.C. 78o–7(i)(1).

[403] *See* Commission 2003 CRA Report, which noted that some participants in the Commission 2002 CRA Hearings questioned the appropriateness of unsolicited credit ratings because they could used to engage in ''strong-arm'' tactics to induce payment for a credit rating the issuer did not request.

[404] 15 U.S.C. 78o–7(i)(1)(A).

[405] *See* Commission 2003 CRA Report, which noted that some participants in the Commission's 2002 CRA Hearings worried that issuers could be unduly pressured to purchase advisory services, particularly in cases where they were solicited by the credit rating analyst.

The Commission did not receive any comments objecting to its preliminary determination that this practice would be unfair, coercive, or abusive. The Commission has determined this practice would be unfair, coercive, or abusive and, consequently, is adopting paragraph (a)(1) of Rule 17g–6 substantially as proposed in order to prohibit it.

One commenter did state that there are certain circumstances where it would not be unfair, coercive, or abusive to condition the determination of a credit rating on a security on further analysis of the issuer.[406] Specifically, the commenter stated that to determine a credit rating for a subordinated debt security, a credit rating agency may be required to analyze the overall capital structure of the issuer and determine credit ratings for the issuer as an entity and for its senior debt.[407] The commenter requested that the rule text in paragraph (a)(1) of proposed Rule 17g–6 be amended to clarify that this specific practice is not prohibited.[408]

The Commission believes that the rule text as proposed and as adopted would not prohibit this specific practice. The prohibition applies to conditioning a credit rating on the purchase of ''other'' services of the credit rating agency. In the situation described above, the requirement to analyze the capital structure of the issuer and the creditworthiness of its senior debt is part of the process of determining the credit rating on the subordinated debt. Therefore, the Commission views this as all part of one service and not three different services.

For these reasons, the Commission is adopting the prohibition substantially as proposed.

2. Paragraphs (a)(2) and (a)(3) of Rule 17g–6

Section 15E(i)(1)(C) of the Exchange Act provides that the Commission shall prohibit the following practices if the Commission determines they are unfair, coercive, or abusive:

> Modifying or threatening to modify a credit rating or otherwise departing from systematic procedures and methodologies in determining credit ratings, based on whether the obligor, or an affiliate of the obligor, purchases or will purchase the credit rating or any other service or product of the nationally recognized statistical rating organization or any person associated with such organization.[409]

In the proposing release, the Commission preliminarily determined that these practices would be unfair, coercive, or abusive. Consequently, the Commission proposed to prohibit them through paragraphs (a)(2) and (a)(3) of proposed Rule 17g–6. The Commission did not receive any comments objecting to its preliminary determination that these practices are unfair, coercive, or abusive. The Commission has determined they are unfair, coercive, or abusive for the reasons discussed below and, consequently, is adopting paragraphs (a)(2) and (a)(3) of Rule 17g–6 substantially as proposed in order to prohibit them.

As adopted, paragraph (a)(2) prohibits an NRSRO from issuing, or offering or threatening to issue, a credit rating that is not determined in accordance with the NRSRO's established procedures for determining credit ratings based on whether the rated person purchases or will purchase the credit rating or another product or service.[410] Under this provision, an NRSRO is prohibited from issuing or threatening to issue a credit rating that is lower than would result from using its methodology for determining credit ratings based on whether the issuer or obligor pays for the credit rating or any other service or product of the NRSRO and its affiliates. The NRSRO also will be prohibited from issuing or promising to issue a higher credit rating in these circumstances.[411]

The practice prohibited in this paragraph is distinguishable from the practice prohibited in Paragraph (a)(1) of Rule 17g–6. Paragraph (a)(1) addresses the situation where an NRSRO conditions the issuance of a credit rating on the purchase of another service or product. Paragraph (a)(2) addresses the situation where an NRSRO conditions the opinion reached in the credit rating on the purchase of the credit rating or another service or product.[412] Thus, unlike paragraph (a)(1), an NRSRO will violate paragraph (a)(2) if it conditions the issuance of the credit rating on the obligor or issuer paying for the credit rating. This is because the NRSRO will not be agreeing to determine a credit rating that reflected the NRSRO's assessment of the creditworthiness of the issuer or obligor as determined by its methodologies. Rather, the NRSRO will be agreeing to skew the credit rating higher based on the issuer or obligor agreeing to pay for it.

Paragraph (a)(3) Rule 17g–6 prohibits an NRSRO from modifying, or offering or threatening to modify, a credit rating in a manner contrary to its procedures for modifying a credit rating based on whether the rated person, or an affiliate of the rated person, purchases or will purchase the credit rating or any other service or product of the NRSRO and its affiliates. The prohibition in paragraph (a)(2) of Rule 17g–6 applies to threats or promises with respect to the issuance of a credit rating. Paragraph (a)(3) extends this prohibition to threats or promises with respect to changing an existing credit rating.[413]

The Commission believes these practices are unfair, coercive, or abusive because an entity's cost of credit and, in some cases, ability to obtain credit, generally depends on its credit rating. Entities with lower credit ratings must pay higher interest rates to borrow funds or issue debt. In some cases, a low credit rating could block an entity's access to credit. Thus, it is in a borrower's economic interest to have a high credit rating. This creates the potential for an NRSRO to have inappropriate leverage over an issuer or obligor.

An NRSRO could use this leverage to obtain business by threatening to issue or modify a credit rating in a manner that results in a lower credit rating than would have resulted from using its established methodologies. The NRSRO also could issue a lower credit rating or lower an existing rating to punish an issuer or obligor for not purchasing the credit rating or another service or product of the NRSRO and its affiliates. Conversely, the NRSRO could promise to issue or modify a credit rating in a manner that results in a higher credit rating than would have resulted from using its established methodologies as a reward for purchasing the credit rating or other services or products. Paragraphs (a)(2) and (3) of Rule 17g–6 are designed to provide a check on the potential inappropriate influence an NRSRO may have over issuers and obligors by prohibiting an NRSRO from using this leverage to coerce an issuer or obligor into purchasing a credit rating or other services and products of the NRSRO and its affiliates.

[406] *See* Moody's Letter.

[407] *Id.*

[408] *Id.*

[409] 15 U.S.C. 78o–7(i)(1)(C).

[410] Paragraph (a)(2) of Rule 17g–6.

[411] Presumably, an issuer or obligor would not agree to compensate an NRSRO for a credit rating that was lower than would result from applying the NRSRO's methodologies. Nonetheless, if an NRSRO agreed to issue a lower than warranted credit rating in return for compensation, the NRSRO would violate paragraph (a)(2) as well.

[412] *See* Commission 2003 CRA Report, which noted that some participants in the Commission 2002 CRA Hearings believed that, even if the purchase of ancillary services did not impact the credit rating decision, issuers may be pressured into using the services out of fear that their failure to do so may adversely impact their credit rating.

[413] As noted above, the prohibitions in paragraphs (a)(2) and (a)(3) Rule 17g–6 are being adopted pursuant to authority in Section 15E(i)(1)(C) of the Exchange Act (15 U.S.C. 78o–7(i)(1)(C)).

The Commission further notes that these practices could result in credit ratings that mislead the marketplace and undermine the regulatory use of NRSRO credit ratings. An NRSRO that follows through on a threat to issue a low credit rating or promise to issue a high credit rating will be issuing a credit rating that does not accurately reflect the credit rating agency's true assessment of the creditworthiness of the issuer or obligor. The credibility and reliability of an NRSRO and its credit ratings depends on the NRSRO developing and implementing sound methodologies for determining credit ratings and following those methodologies. The fact that an issuer or obligor agrees or refuses to purchase a credit rating or other service or product from the NRSRO and its affiliates should have no bearing on the NRSRO's credit assessment of the issuer or obligor.[414]

For these reasons, the Commission is adopting the prohibition substantially as proposed.

3. Paragraph (a)(4) of Rule 17g–6

Section 15E(i)(1)(B) of the Exchange Act provides that the Commission by rule shall prohibit any act or practice the Commission determines to be unfair, coercive, or abusive relating to:

> Lowering or threatening to lower a credit rating on, or refusing to rate, securities or money market instruments issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction, unless a portion of the assets within such pool or part of such transaction, as applicable, also is rated by the nationally recognized statistical rating organization[.][415]

In explaining this statutory provisions, the Senate Report stated that ''there may be instances when a rating agency may refuse to rate securities or money market instruments for reasons that are not intended to be anti-competitive.'' The Senate Report further stated that ''the Commission * * * should prohibit only those ratings refusals that occur as part of unfair, coercive or abusive conduct.''

a. Structured Product Credit Rating Practices

Two of the current NRSROs—Fitch and DBRS—believe two other NRSROs—S&P and Moody's engage in anti-competitive practices in the area of determining credit ratings for structured products and, consequently, these practices should be found by the Commission to be unfair, coercive, or abusive.[416] These practices relate to instances where the credit rating agency has not rated particular securities that have been rated by another credit rating agency and that underlie a structured product. S&P and Moody's believe their practices are necessary to determine a credible credit rating.[417]

The practices take several forms. The credit rating agency may, as a condition of issuing a credit rating for a structured product, require that it effectively issue a public credit rating for a fee for most, if not all, the assets underlying the structured product.[418] The second form involves the credit rating agency insisting that it provide a private credit rating or credit assessment for a fee with respect to the unrated assets.[419] The third form involves the credit rating agency taking into consideration the internal credit analysis of another person (*e.g.*, the underwriter, sponsor, or manager of the structured product) with respect to the unrated assets to determine a credit rating or private credit rating, or perform a credit assessment of the unrated assets.[420] The fourth form involves the credit rating agency taking into consideration but not necessarily adopting the credit ratings of another credit rating agency to determine a credit rating or private credit rating, or perform a credit assessment of the unrated assets.[421] Under this last form, the credit rating agency may employ a standardized methodology to discount (notch down) the credit ratings of the other credit rating agency based on the type of security and category of credit rating.[422]

b. Proposed Rule 17g–6(a)(4)

In the proposing release, the Commission preliminarily determined that it would be unfair, coercive, or abusive for an NRSRO to issue or threaten to issue a lower credit rating, lower or threaten to lower an existing credit rating, refuse to issue a credit rating, or to withdraw a credit rating with respect to a structured product unless a portion of the assets underlying the structured product also are rated by the NRSRO. Consequently, the Commission proposed to prohibit these practices in paragraph (a)(4) of proposed Rule 17g–6.

The Commission also proposed an exception to the prohibition that would permit an NRSRO to refuse to issue the credit rating or withdraw the credit rating if the NRSRO has rated less than 85% of the market value of the assets underlying the structured product. This was designed to address the concern that an NRSRO when assessing the creditworthiness of the structured product would be forced to issue a credit rating either when a substantial portion of the underlying assets were not rated or when the underlying assets have been rated by another credit rating agency. If the underlying assets were unrated, the NRSRO may not have sufficient information for issuing a credit rating on the structured product. In the case where the underlying assets were rated by another credit rating agency, the other credit rating agency may have used different methodologies to assess the creditworthiness of the asset and may have determined a credit rating that is different than the credit rating the NRSRO would issue, if it had rated the asset.

c. Comments on Proposed Rule 17g–6(a)(4)

i. Support for a Prohibition

The Commission received far more comments on this provision of the proposed rules than on any other provision. Many commenters expressed strong support for the prohibition; though many of the supporters stated that the 85% exception was too high and should be lowered to at least 66%.[423] These commenters generally

[414] The Commission is mindful of the limitation in Section 15E(c)(2) of the Exchange Act that the rules the Commission adopts under the Exchange Act not regulate the substance of credit ratings (15 U.S.C. 78o–7(c)(2)). The Commission does not believe that this prohibition will interfere with the process by which an NRSRO assesses the creditworthiness of a security, money market instrument, or obligor. An issuer's or obligor's agreement or refusal to pay the NRSRO or its affiliate for a service or product is, of itself, not relevant to a credit assessment of the issuer or obligor. Moreover, this is a practice that Congress specifically identified in Section 15E(i)(1)(C) of the Exchange Act as potentially unfair, coercive, or abusive (15 U.S.C. 78o–7(i)(1)(C)).

[415] 15 U.S.C. 78o–7(i)(1)(B).

[416] *See* DBRS Letter; Fitch Letter; letter dated April 11, 2007 from Charles D. Brown, General Counsel, Fitch Ratings (''Fitch 2nd Letter'').

[417] *See* letter dated March 30, 2007 from Raymond W. McDaniel, President, Moody's Investor Services (''Moody's 2nd Letter''); letter dated April 24, 2007 from Jeanne M. Dering, Executive Vice President, Global Regulatory Affairs & Compliance (''Moody's 3rd Letter); S&P Letter; Moody's Letter.

[418] *Id.*

[419] *Id.*

[420] *Id.*

[421] *Id.*

[422] *Id.*

[423] *See e.g.*, DBRS Letter; Fitch letter; Fitch 2nd Letter. *See also* letter dated February 13, 2007 from Janet M. Tavakoli, President, Tavakoli Structured Finance, Inc.; letter dated February 14, 2007 from Gregory G. Raab, Chief Executive Officer, Axon; letter dated February 16, 2007 from Emile Van den Bol, Managing Director, Deutsche Bank; letter dated February 16, 2007 from Kent D. Born, Senior Managing Director, PPM America; letter dated February 23, 2007 from Patti Unti, Managing Director, Capmark Investments LP; letter dated February 23, 2007 from David Lazarus, Managing Director, Capmark Securities, Inc.; letter dated February 28, 2007 from Ronald E. Schrager, Chief Executive Officer, LNR Property Corporation; letter

Continued

believe the proposed rule would serve to increase competition within the credit ratings market, thus benefiting investors in structured products.[424]

For example, DBRS stated that notching has a ripple effect on competition wider than just the structured products and affects competition in the corporate bond rating market and that the practices employed by S&P and Moody's could have a profound and harmful effect on efforts to increase competition among NRSROs.[425] Fitch stated that adoption of the proposed rule is critical to achieving the Rating Agency Act's objective of greater accountability, transparency, and competition in the credit ratings market.[426] Fitch noted that structured products increasingly are designed to hold other structured products.[427] Fitch stated that the practices employed by S&P and Moody's have increased their market share in rating structured products,

> As the structured finance market has grown exponentially in terms of both dollar value and number of market participants, it has become increasingly circular. Most notably, [structured product] issuers regularly acquire securities of other [structured product] issuers. The circularity of the market, in which large, intertwined investors are each subject to notching guidelines mandated by Moody's and S&P, has allowed Moody's and S&P to extend their partner monopoly in the traditional bond market to the increasingly prominent structured finance market. Therein lies the power of the unfair, coercive, and abusive practice of notching.[428]

Academic commenters also stated that Moody's and S&P's practices are unfair, coercive, and abusive within the meaning of the Rating Agency Act.[429] They stated that the securities market would benefit from increased competition in the credit rating market, and that these practices have served to hinder Fitch's ability to compete.[430] One commenter also argued that these practices may lead to misleading credit ratings if another credit rating agency's ratings are categorically reduced without analytic support.[431]

As noted above, many of the commenters that supported the prohibition stated that the 85% threshold should be lowered to 66% or less.[432] They based this assertion on Fitch's showing that S&P, Moody's, and Fitch each shared approximately 66% of the structured product market before S&P and Moody's began their practices in 2001.[433] They further stated that as a direct result of notching, S&P and Moody's have significantly increased their market share; while Fitch has lost market share.[434]

The commenters that support prohibiting the practices of S&P and Moody's believe that the remedy is to require an NRSRO to rely on the credit ratings of another NRSRO without employing any mapping methodology that would lower the credit rating.[435] For example, Fitch argues that historical default, transition rate, and rating comparability studies indicate that the credit ratings of S&P, Moody's, and Fitch for structured products are comparable.[436] Therefore, Fitch asserts that NRSROs should rely on the credit ratings of other NRSROs at face value.[437] Fitch suggested that the proposed rule be modified to provide that if an NRSRO has rated 66% of the par value of an asset pool, and all assets in the pool are publicly rated by two or more NRSROs, for those assets the NRSRO has not itself rated, the NRSRO be required to use one of the two or more public ratings assigned to the underlying asset.[438]

ii. Opposition to a Prohibition

S&P, Moody's, and several other commenters (including academic commenters) strongly opposed the prohibition in paragraph (a)(4) of proposed Rule 17g–6.[439] They cited a number of reasons, most notably that it would require one NRSRO to rely on the credit ratings of another NRSRO.[440] Several commenters asserted that the proposed rule would have an anticompetitive effect.[441] They argued that requiring an NRSRO to adopt the credit ratings of competitors in its credit ratings analysis would reduce competition because the ability of an NRSRO to reach an independent determination of creditworthiness based on different methodologies or criteria would be impeded.[442] These commenters state that value is brought to the market by allowing NRSROs to deliver different analytical perspectives on issuers and securities.[443] Another commenter wrote that the proposed rule would require an NRSRO to put its own reputation at risk on behalf of the commercial interests of a competitor.[444] Further, Moody's argued that differences among credit rating opinions on the same security tend to be larger than those observed when comparing only published credit ratings on jointly-rated securities, and that differences between credit rating opinions are more common and are often greater when Moody's rates securities in a category other than Aaa.[445] A rule that prohibited notching would, in the view of many commenters, prohibit an agency from

dated March 5, 2007 from David Hynes, Partner, Northcross Capital LLP; letter dated March 6, 2007 from S. Trezevant Moore, Jr., President & COO, Luminent Mortgage Capital, Inc.; letter dated March 7, 2007 from Bruce E. Stern, Chairman, Government Affairs Committee, Association of Financial Guaranty Insurers; letter dated March 9, 2007 from Petra Spiegel, Eurohypo AG; letter dated March 9, 2007 from Landon D. Parsons, Managing Director, G-Bass (''G-Bass Letter''); letter dated March 9, 2007 from Pat G. Halter, Chief Executive Officer, Principal Real Estate Investors; letter dated March 12, 2007 from Charles Covell, Executive Vice President, Citigroup Alternative Investments; letter dated March 12, 2007 from Rodney J. Dillman, General Counsel, Babson Capital Management LLC; letter dated March 12, 2007 from Louis C. Lucido, Group Managing Director, Trust Company of the West; letter dated March 12, 2007 from Daniel Ivascyn, Managing Director, PIMCO (''PIMCO Letter''); letter dated March 27, 2007 from Dottie Cunningham, Chief Executive Officer, Commercial Mortgage Securities Association; letter dated April 23, 2007 from Dwight M. Jaffe, Professor, Haas School of Business (''Jaffe Letter''); letter dated April 24, 2007 from Daniel Rubinfeld, Professor, Boalt Law School (''Rubinfeld Letter''); letter dated April 25, 2007 from Dottie Cunningham, Chief Executive Officer, Commercial Mortgage Securities Association; letter dated May 11, 2007 from Kent Wideman, Group Managing Director, Policy and Rating Committee, and Mary Keogh, Managing Director, Policy and Regulatory Affairs, Dominion Bond Rating Service (''DBRS 2nd Letter'').

[424] *Id.*

[425] *See* DBRS Letter; DBRS 2nd Letter.

[426] *See* Fitch Letter.

[427] *Id.*

[428] Fitch Letter.

[429] *See* Rubinfeld Letter; Jaffe Letter.

[430] *Id.*

[431] *See* Jaffe Letter.

[432] *See, e.g.*, Fitch Letter; PIMCO Letter; G-Bass Letter.

[433] *Id.*

[434] *Id.*

[435] *See, e.g.*, Fitch Letter.

[436] *Id.*

[437] *See* Fitch Letter.

[438] *See* Fitch 2nd Letter.

[439] *See, e.g.*, S&P Letter; S&P 2nd Letter; Moody's Letter; Moody's 3rd; R&I Letter; FSR Letter; Rutherfurd Letter; Langohr Letter; AST Letter; letter dated March 30, 2007 from Raymond W. McDaniel, President, Moody's Investor Services (''Moody's 2nd Letter''); letter dated March 30, 2007 from Charles W. Calomiris, Professor, Columbia University, *et al.* (''Calomiris Letter''); letter dated April 3, 2007, from J. Darrell Duffie, Professor, Stanford University, Graduate School of Business; letter dated April 6, 2007 from Jean Helwege, Associate Professor of Finance, Penn State University; letter dated April 13, 2007 from Robert M. Chilstrom, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, on behalf of Moody's Investor Services; letter dated April 18, 2007 from Gunter Loeffler, Professor, University of Ulm, Germany; letter dated April 26, 2007 from Louis H. Ederington, Professor, Price College of Business, University of Oklahoma; letter dated April 28, 2007 from Mitchell A. Petersen, Professor, Kellogg School of Management, Northwestern University; letter dated May 3, 2007 from the Honorable Charles E. Schumer, Senator, Robert Menendez, Senator, John E. Sununu, Senator, and Mike Enzi, Senator, U.S. Senate; letter dated May 12, 2007 from Ren-Raw Chen, Professor, Rutgers University.

[440] *Id.*

[441] *See* Calomiris Letter.

[442] *See* Moody's 3rd Letter; Calomiris Letter.

[443] *See* Moody's Letter; Calomiris Letter.

[444] *See* Langohr Letter.

[445] *See* Moody's 2nd Letter.

forming its own opinion about the risks of collateral in a structured product.[446]

Additionally, S&P and Moody's believe the proposed rule would unduly interfere with their methodologies for determining credit ratings, could lead to inaccurate credit ratings and credit ratings that violate securities laws, and unnecessarily raise constitutional issues.[447] They argue that users of credit ratings believe ratings reflect the agency's bona fide opinion of the creditworthiness of a particular issuer, security, or transaction.[448] S&P wrote that when an agency is asked to rate structured products it must understand the credit quality of all of the underlying assets.[449] If an NRSRO was required to use the credit rating of another NRSRO, it would in effect lose the right to understand the credit quality of the underlying assets, and lose control over the credit rating opinions it publishes.[450] Such a result, it argues, would be contrary to the legislative intent that credit ratings be independent and free from interference by third parties, including governments, issuers, investors, and competitors.[451] Moody's similarly argues that such a credit rating would not reflect an evaluation of the credit risk of all the assets in the pool, and therefore, negatively impact the credibility and reliability of its credit ratings and increase the risks to investors who rely on its credit ratings.[452]

S&P and Moody's argue that prohibiting their practices, in effect, would require them to rely on another NRSRO's credit rating even when they believed that credit rating to be unsupportable.[453] Further, if they were required to rely on a credit rating from another NRSRO, they argue they would be placed in a position of having to publish credit ratings that they do not believe are accurate or engage in a prohibited practice.[454] They state that this would create the untenable choice of taking an action that is inconsistent with general securities law principles or violating Rule 17g–6.[455]

S&P and Moody's state that their practices are analytically justified methods of forming an independent credit rating opinion.[456] S&P asserts that it is appropriate to reserve the right to discount the credit ratings of other credit rating agencies when incorporating these credit ratings into its own analysis to account for differences in analytical and surveillance practices among credit rating agencies, preserve its ability to perform its own surveillance of the underlying assets, and account for the possibility that the assets could be down-rated by another credit rating agency without notice.[457]

S&P and Moody's also have disputed the assertion that there are no differences between their credit ratings and Fitch's credit ratings.[458] S&P argues that historical correlations that may have existed are not a justification for adopting a rule that would require recognition of future credit ratings issued by credit rating agencies that may register as NRSROs.[459] Moreover, S&P and Moody's say that their practice of mapping to other credit ratings was developed to accommodate structured product sponsors who did not want to wait or pay for credit analysis on the assets underlying a structured product that the agency had not previously rated.[460] They asserted that this practice provides a quicker means to close a structured product issuance because the existing credit rating serves as a starting point in analyzing a portion of the pool of underlying assets.[461] Therefore, in their view, prohibiting their practices would harm users of credit ratings.[462]

S&P and Moody's also commented on how paragraph (a)(4) of proposed Rule 17g–6 should be revised. For example, Moody's commented that the 85% threshold in the proposed rule was not appropriate.[463] It argued that credit ratings for tranches of structured products are sensitive to the accuracy of credit ratings for even small portions of the underlying asset pool. Further, S&P and Moody's argued that the 85% threshold would create an incentive for collateral managers to include the riskiest securities in the 15% unrated portion of the structured product.[464] Other commenters also argued the proposed rule would undermine the market's ability to offset potential harm from credit rating shopping.[465]

Moody's and S&P recommended that the Commission strike paragraph (a)(4) of Proposed Rule 17g–6 in its entirety. Alternatively, Moody's commented that if paragraph (a)(4) is retained, the rule should be revised to clearly prohibit only conduct that is motivated by an ''unfair, coercive or abusive'' intent.[466] Moody's suggested that the rule be amended to provide, among other things, that the prohibitions of paragraph (a)(4) shall not apply if any such action is taken in accordance with the NRSRO's analytical procedures and methodologies and that the rule should not compel credit rating agencies to use or to rely upon the credit rating opinions of other persons as their own.

S&P commented that one alternative to prohibiting these practices would be a record retention regime whereby NRSROs would be required to retain records related to their decisions to treat another NRSRO's credit ratings, including the NRSRO's reasons for the treatment.[467] S&P stated that requiring the firm to explain its reasons would guard against unfair, coercive, or abusive practices.[468]

In lieu of striking paragraph (a)(4) or adopting only recordkeeping requirements, S&P commented that paragraph (a)(4) should be revised to provide that in situations where it has not rated 100% of the underlying assets, an NRSRO should have three options: (i) Accepting the credit ratings of others at face value; (ii) refusing to rate the transaction at all; or (iii) reviewing all the underlying assets and receiving compensation for the additional work involved.[469]

d. Final Rule 17g–6(a)(4)

At this time, the Commission cannot determine that the acts and practices described above are unfair, coercive, or abusive in and of themselves. The Commission needs more information about these practices to gain a better understanding of how they were developed and are being employed. The Commission is concerned, however, that these practices have adversely affected competition among credit rating agencies and that they may occur for anticompetitive purposes. Consequently, the Commission is adopting a final rule that is intended to increase accountability and

[446] *See, e.g.*, Moody's Letter.

[447] *See* S&P Letter; Moody's Letter.

[448] *Id.*

[449] *See* S&P Letter.

[450] *Id.*

[451] *Id.*

[452] *See* Moody's 3rd Letter.

[453] *See* Moody's Letter; Moody's 2nd Letter; Moody's 3rd Letter; S&P Letter; S&P 2nd Letter.

[454] *Id.*

[455] *Id.*

[456] *Id.*

[457] *See* S&P Letter; S&P 2nd Letter.

[458] *See* S&P 2nd Letter; Moody's 3rd Letter.

[459] *See* S&P 2nd Letter.

[460] *See* Moody's Letter; Moody's 2nd Letter; Moody's 3rd Letter; S&P Letter; S&P 2nd Letter.

[461] *Id.*

[462] *Id.*

[463] *See* Moody's Letter; Moody's 2nd Letter; Moody's 3rd Letter; S&P Letter; S&P 2nd Letter.

[464] *Id.*

[465] *See* Calomiris Letter.

[466] *See* Moody's Letter.

[467] *See* S&P Letter; *see also* DBRS 2nd Letter supporting increased recordkeeping and revising its earlier comment that an NRSRO should be required to rely on the credit ratings of another NRSRO in light of objections that this would interfere with how an NRSRO determines credit ratings.

[468] *See* S&P Letter.

[469] *Id.*

transparency in the structured product credit ratings market.

First, the Commission has determined that the practices identified in Section 15E(i)(1)(B) of the Exchange Act [470] are unfair, coercive, or abusive to the extent they are practiced with anticompetitive intent. Consequently, paragraph (a)(4) of Rule 17g–6 prohibits an NRSRO from issuing or threatening to issue a lower credit rating, lowering or threatening to lower an existing credit rating, refusing to issue a credit rating, or withdrawing or threatening to withdraw a credit rating, with respect to securities or money market instruments issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction, unless all or a portion of the assets within such pool or part of such transaction also are rated by the nationally recognized statistical rating organization where such practice is engaged in by the nationally recognized statistical rating organization for an anticompetitive purpose.

The Commission recognizes that proving anticompetitive intent will be difficult, particularly where an NRSRO has analysis to support the contention that its methodology is not arbitrary and is designed to make the credit rating of a structured product more accurate. Nonetheless, the Commission believes this prohibition will be an important deterrent against anticompetitive practices when combined with the enhanced recordkeeping requirements in Rule 17g–2 discussed below.

e. Enhanced Recordkeeping Requirements

As noted above, two commenters suggested that an alternative to banning the practices of S&P and Moody's would be a record retention regime whereby NRSROs would be required to retain records related to their decisions on how to treat, and methodology for treating, another NRSRO's credit ratings into the credit rating of a structured product.[471] S&P stated that requiring an NRSRO to explain its reasons for the treatment would guard against unfair, coercive, or abusive practices.[472]

The Commission believes that recordkeeping requirements aimed at these practices are necessary or appropriate in the public interest or for the protection of investors. Consequently, the Commission is adopting three recordkeeping requirements in this area. These requirements will assist the Commission in better understanding how these practices are developed and employed. This information may provide a basis for the Commission to determine whether it should find a specific practice to be unfair, coercive, or abusive. The Commission also believes that increased scrutiny on the practices coupled with the potential for liability under Rule 17g–6 will deter an NRSRO from acting with anticompetitive intent.

i. Paragraph (a)(7) of Rule 17g–2

As adopted, paragraph (a)(7) of Rule 17g–2 requires an NRSRO to make a record that lists each security and its corresponding credit rating issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction where the NRSRO in determining the credit rating for the security treats assets within such pool or as a part of such transaction that are not subject to a credit rating of the NRSRO by any or a combination of the practices described above and identified in paragraphs (a)(7)(i) through (iv) of Rule 17g–2.

As discussed above, there are four practices by which a credit rating agency may treat unrated assets underlying a structured product when determining a credit rating for the structured product.[473] Moreover, the credit rating agency may condition the issuance of a credit rating for the structured product on its employing one or more of these practices. First, the credit rating agency may require that it effectively issue a public credit rating for most, if not all, the assets underlying the structured product.[474] This practice is described in paragraph (a)(7)(i) of Rule 17g–2. Second, the credit rating agency may require that it provide a private credit rating or credit assessment for a fee with respect to the unrated assets.[475] This practice is described in paragraph (a)(7)(ii) of Rule 17g–2.

Third, the credit rating agency may take into consideration the internal credit analysis of another person (*e.g.*, the underwriter, sponsor, or manager of the structured product) with respect to the unrated assets to determine a credit rating or private credit rating, or perform a credit assessment of the unrated assets.[476] This practice is employed after the credit rating agency has done a review of how the person performs its credit analysis, including a review of the specific procedures and methodologies employed by the person. This practice is described in paragraph (a)(7)(iii) of Rule 17g–2.

Fourth, the credit rating agency may take into consideration but not necessarily adopt the credit ratings of another credit rating agency for the unrated assets to determine a credit rating or private credit rating, or perform a credit assessment of the unrated assets.[477] Under this last practice, the credit rating agency may employ a standardized methodology to discount (notch down) the credit ratings of the other credit rating agency based on the type of security and category of credit rating.[478] This practice is described in paragraph (a)(7)(iv) of Rule 17g–2.

The intent of the recordkeeping provision in paragraph (a)(7) of Rule 17g–2 is to alert Commission examiners to those structured product credit ratings issued by an NRSRO that have been determined using one or more of these practices, which commenters have argued are unfair, coercive, or abusive. This will assist the examiners in requesting the records relating to these credit ratings in order to monitor these practices and get a better understanding of how they are employed. The Commission believes this provision is necessary or appropriate in the public interest or for the protection of investors because it will assist the Commission in reviewing whether these practices are being engaged in with anticompetitive intent in violation of Rule 17g–6(a)(4).

For these reasons, the Commission is adopting the provision in Rule 17g–2.

ii. Paragraph (b)(8) of Rule 17g–2

As adopted, paragraph (b)(8) of Rule 17g–2 requires an NRSRO to retain internal documents that contain information, analysis, or statistics that were used to develop a procedure or methodology to treat the credit ratings of another NRSRO for the purpose of determining a credit rating of a security or money market instrument issued by an asset pool or part of any asset-backed or mortgage-backed securities transaction.

As discussed above, the commenters who opposed the prohibition in Rule 17g–6(a)(4), as proposed, stated that there were legitimate reasons for using, but lowering, another credit rating agency's credit ratings or insisting on performing an independent assessment of the assets rated by another credit rating agency.[479] As noted above, the Commission has insufficient information at this time to determine

[470] 15 U.S.C. 78o–7(i)(1)(B).

[471] *See* S&P Letter; DBRS 2nd Letter.

[472] *See* S&P Letter.

[473] *See* DBRS Letter; Fitch Letter; Fitch 2nd Letter; Moody's Letter; Moody's 2nd Letter; Moody's 3rd Letter; S&P Letter; S&P 2nd Letter.

[474] *Id.*

[475] *Id.*

[476] *Id.*

[477] *Id.*

[478] *Id.*

[479] *See* S&P Letter; Moody's Letter.

that such practices are a pretext for anticompetitive behavior or that such practices are appropriate. The records that an NRSRO must retain under this provision will assist the Commission in understanding whether the NRSROs that engage in these practices have analytical, statistical, or other bases to support their methodologies. The existence (or absence) and nature of such information will assist the Commission in analyzing whether the practices are employed with the intent to improve the quality and accuracy of credit ratings or as pretexts for anticompetitive behavior.

For example, the Commission understands issuers may ask for pre-credit rating assessments for a security from three or more credit rating agencies and, based on the assessments or other considerations, hire one or more, but not all, of the credit rating agencies to issue the credit rating.[480] A credit rating agency that was not hired to issue a credit rating for the security may use its pre-credit rating assessment as part of an analysis of how it would rate this type of security as compared to the other credit rating agencies. This analysis may be used to develop a procedure or methodology to treat the credit ratings of the other credit rating agencies for securities underlying a structured product in developing a credit rating for the structured product.[481] The treatment may include a schedule in which the credit ratings of the other credit rating agencies are notched down to the extent they are included in the structured product. Under paragraph (b)(8) of Rule 17g–2, an NRSRO that uses pre-credit rating assessments to develop such a schedule will need to retain any records documenting its pre-credit rating assessments and the process by which the pre-credit rating assessments were used to arrive at the number of notches the securities will be discounted.

The Commission believes this provision is necessary or appropriate in the public interest or for the protection of investors because it will assist the Commission in reviewing whether these practices are being engaged in with anticompetitive intent in violation of Rule 17g–6(a)(4).

iii. Paragraph (b)(9) of Rule 17g–2

As adopted, paragraph (b)(9) of Rule 17g–2 requires an NRSRO to retain for each security identified in the record required under paragraph (a)(7) of Rule 17g–2, any document that contains a description of how assets within such pool or as a part of such transaction not rated by the NRSRO but rated by another NRSRO were treated for the purpose of determining the credit rating of the security.

These records will permit Commission examiners to review on a case-by-case basis the method by which an NRSRO incorporates the credit ratings of another NRSRO into the credit rating of a structured product. For example, examiners will be able to compare the methodologies for incorporating highly rated assets with those for lower rated assets. One commenter that strongly supports prohibiting these practices states that credit rating agencies engaging in these practices notch down assets they have rated in the highest credit rating categories even though studies suggest that its credit ratings perform comparably.[482]

The Commission believes this provision is necessary or appropriate in the public interest or for the protection of investors because it will assist the Commission in reviewing whether these practices are being engaged in with anticompetitive intent in violation of Rule 17g–6(a)(4).

5. Unsolicited credit ratings

In the proposing release, the Commission preliminarily determined that it would be unfair, coercive, or abusive to issue an unsolicited credit rating and communicate with the issuer or obligor to induce or attempt to induce them to pay for the credit rating or another product or service of the NRSRO or its affiliates. Consequently, paragraph (a)(5) of proposed Rule 17g–6 would have prohibited this practice.

Commenters raised a number of concerns with respect to how this prohibition would operate in practice.[483] For the most part, they worried it was overbroad and, consequently, would prohibit legitimate business activities that are not coercive.[484] As discussed with respect to Exhibit 2, issuers and obligors, for example, may consent to the issuance, and participate in the determination, of a credit rating even if they did not specifically request that the credit rating be issued. The Commission wants to gain a better understanding through its examination function of how credit rating agencies define ''unsolicited credit ratings'' and the practices they employ with respect to these ratings. The Commission believes it must gain this understanding before prohibiting any practices in this area.

For these reasons, the prohibition has been eliminated from Rule 17g–6.

V. Paperwork Reduction Act

Certain provisions of the rules contain a ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[485] The Commission published a notice requesting comment on the collection of information requirements in the proposing release and submitted the proposed rules to the Office of Management and Budget (''OMB'') for review in accordance with the PRA. The Commission will publish notice in the Federal Register when it receives clearance from OMB. The Commission did not receive any comments on the burden estimates in the proposing release.

An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid control number. The titles for the collections of information are:

(1) Rule 17g–1, Application for registration as a nationally recognized statistical rating organization; Form NRSRO and the Instructions for Form NRSRO;

(2) Rule 17g–2, Records to be made and retained by national recognized statistical rating organizations;

(3) Rule 17g–3, Annual financial reports to be furnished by nationally recognized statistical rating organizations; and

(4) Rule 17g–4, Prevention of Misuse of Material Nonpublic Information.

A. Collections of Information in the Rules

The rules being adopted implement registration, recordkeeping, financial reporting, and oversight provisions of the Credit Rating Agency Reform Act of 2006 (the ''Rating Agency Act'').[486] The rules contain recordkeeping and disclosure requirements that are subject to the PRA for registered NRSROs and impose mandatory collection of information obligations.

In summary, the rules require a credit rating agency that wishes to register as an NRSRO to furnish an initial application to the Commission for registration on Form NRSRO;[487] and a credit rating agency or NRSRO to furnish a written notice to the

[480] *See* Moody's 3rd Letter.

[481] *See* 17 CFR 240.17g–2(b)(8).

[482] *See* Fitch Letter.

[483] *See* R&I Letter; FSR Letter; DBRS Letter; A.M. Best Letter; Fitch Letter; S&P Letter; Moody's Letter; Langohr Letter; LACE Letter.

[484] *Id.*

[485] 44 U.S.C. 3501 *et seq.*; 5 CFR 1320.11.

[486] Pub. L. 109–291 (2006).

[487] Section 15E(a)(1) of the Exchange Act (15 U.S.C. 78o–7(a)(1)) and Rule 17g–1(a).

Commission to withdraw an initial application or application to be registered in an additional class of credit ratings prior to final action by the Commission.[488] Further, the rules require an NRSRO to (1) furnish an application to the Commission on Form NRSRO for registration in an additional class of credit ratings;[489] (2) furnish an application supplement on Form NRSRO to update information for an initial application or for an application to register an additional class of credit ratings prior to final Commission action;[490] (3) furnish an amendment to the Commission on Form NRSRO to update information in the application after registration;[491] (4) furnish an annual certification to the Commission on Form NRSRO;[492] (5) furnish a withdrawal of registration to the Commission on Form NRSRO;[493] (6) make the current Form NRSRO and Exhibits 1 through 9 publicly available on its Web site, or through another comparable, readily accessible means;[494] (7) make, retain, and preserve certain records;[495] (8) furnish an undertaking to the Commission if a third-party custodian makes or retains these records;[496] (9) furnish the Commission with annual financial reports;[497] and (10) establish certain procedures to prevent the misuse of material nonpublic information.[498] Many of these requirements are prescribed in Section 15E of the Exchange Act.[499]

B. Use of the Information

Rules 17g–1 through 17g–6, Form NRSRO, and the Instructions for Form NRSRO establish a framework for Commission oversight of NRSROs. The collections of information in the rules are designed to allow the Commission to determine whether an entity should be registered as an NRSRO. Further, they will assist the Commission in effectively monitoring, through its examination function, whether an NRSRO is conducting its activities in accordance with Section 15E of the Exchange Act[500] and the rules thereunder. The rules also are designed to assist users of credit ratings by requiring the disclosure of information that may be used to compare the credit ratings quality of different NRSROs. The disclosures include information about methods for determining credit ratings, organizational structure, policies for safeguarding non-public information, conflicts of interest, policies for managing conflicts of interest, and credit analyst qualifications. As noted in the Senate Report accompanying the Rating Agency Act, this information ''will facilitate informed decisions by giving investors the opportunity to compare ratings quality of different firms.''[501]

C. Respondents

The number of respondents will depend, in part, on the number of entities that meet the statutory requirements to be eligible for registration. The Rating Agency Act, by adding definitions to Section 3 of the Exchange Act,[502] identifies the types of entities that may apply for registration with the Commission as an NRSRO.[503] First, it defines an ''NRSRO'' as a ''credit rating agency'' that, in pertinent part, has been in business as a credit rating agency for at least three consecutive years immediately preceding the date of its application for registration; issues credit ratings certified by 10 QIBs (unless exempted from that requirement) with respect to financial institutions, brokers, dealers, insurance companies, corporate issuers, issuers of asset-backed securities (as that term defined in 17 CFR 229.1101(c)), issuers of government securities, issuers of municipal securities, or issuers of foreign government securities; and is registered with the Commission.[504]

Section 3 of the Exchange Act also defines the term ''credit rating agency'' as, in pertinent part, any person engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee; employing either a quantitative or qualitative model, or both, to determine credit ratings; and receiving fees from either issuers, investors, or other market participants, or a combination of these persons.[505] The definition specifically excludes a commercial credit reporting company.[506] Finally, Section 3 of the Exchange Act defines the term ''credit rating'' to mean ''an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments.''[507]

These definitions create threshold eligibility requirements with respect to the entities that are eligible to apply for registration as an NRSRO. Because NRSROs have not previously been supervised as such, and because credit rating agencies include publicly and privately held companies located throughout the world, it is difficult to estimate the number of entities that are eligible to register as NRSROs.

In 2000, a working group of the Basel Committee on Banking Supervision[508] issued a report on credit rating agencies that was based, in part, on surveys of 28 credit rating agencies located around the world, including the five credit rating agencies currently identified as NRSROs through the Commission's no-action letter process.[509] In its report, the working group estimated that there were approximately 150 credit rating agencies located world-wide.[510] The working group also noted that there was a wide disparity in size among credit rating agencies in terms of number of employees and credit ratings issued.[511] In addition, the working group noted that some credit rating agencies focus exclusively on issuers in the countries where they are located.[512]

The Web site *http://www.DefaultRisk.com,* which has

[488] Rule 17g–1(d); see also Section 15E(a)(1) of the Exchange Act (15 U.S.C. 78o–7(a)(1)).

[489] Rule 17g–1(b).

[490] Rule 17g–1(c).

[491] Section 15E(b)(1) of the Exchange Act (15 U.S.C. 78o–7(b)(1)) and Rule 17g–1(e).

[492] Section 15E(b)(2) of the Exchange Act (15 U.S.C. 78o–7(b)(2)) and Rule 17g–1(f).

[493] Section 15E(e)(1) of the Exchange Act (15 U.S.C. 78o–7(e)(1)) and Rule 17g–1(g).

[494] Section 15E(a)(3) of the Exchange Act (15 U.S.C. 78o–7(a)(3)) and Rule 17g–1(i).

[495] Rule 17g–2 under authority in Section 17(a)(1) of the Exchange Act (15 U.S.C. 78q(a)(1)).

[496] Rule 17g–2(e) under authority in Section 17(a)(1) of the Exchange Act (15 U.S.C. 78q(a)(1)).

[497] Section 15E(k) of the Exchange Act (15 U.S.C. 78o–7(k)) and Rule 17g–3.

[498] Section 15E(g) of the Exchange Act (15 U.S.C. 78o–7(g)) and Rule 17g–4.

[499] *See* 15 U.S.C. 78o–7.

[500] 15 U.S.C. 78o–7.

[501] *See Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 3850,* Credit Rating Agency Reform Act of 2006, S. Report No. 109–326, 109th Cong., 2d Sess. (Sept. 6, 2006) (''Senate Report'').

[502] 15 U.S.C. 78c.

[503] *See* Section 3 of the Rating Agency Act.

[504] Section 3(a)(62) of the Exchange Act (15 U.S.C. 78c(a)(62)). Section 3(a)(64) of the Exchange Act (15 U.S.C. 78c(a)(64)) defines the term ''qualified institutional buyer'' (''QIB'') as having the ''meaning given such term in [17 CFR 230.144A(a)] or any successor thereto.''

[505] Section 3(a)(61) of the Exchange Act (15 U.S.C. 78c(a)(61)).

[506] Section 3(a)(61)(A) of the Exchange Act (15 U.S.C. 78c(a)(61)(A)).

[507] Section 3(a)(60) of the Exchange Act (15 U.S.C. 78c(a)(60)).

[508] The Basel Committee on Banking Supervision is comprised of members from Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, the United Kingdom and the United States. Countries are represented by their central bank and also by the authority with formal responsibility for the prudential supervision of banking business where this is not the central bank. More information about the Basel Committee for Banking Supervision can be found at: *http://www.bis.org/.*

[509] *Credit Ratings and Complementary Sources of Credit Quality Information,* Working group of the Basel Committee on Banking Supervision, No. 3—August 2000 (''*Basel Report*'').

[510] *Id.*

[511] *Id.*

[512] *Id.*

tracked the number of credit rating agencies, identifies 57 credit rating agencies as of February 2006 and indicates that this count reflects a decrease from a previous count of 74.[513] The Web site attributed the decrease to smaller firms either being consolidated into larger firms or ceasing operations.[514]

The estimates in the 2000 *Basel Report* and by *DefaultRisk.Com* provide some basis upon which to estimate the number of entities engaging in the business of issuing credit ratings. We cannot determine how many of the entities included in these estimates meet the statutory requirements to apply for, and be registered as, an NRSRO.

In addition, it is difficult to estimate with certitude how many credit rating agencies ultimately would volunteer to be registered as NRSROs.[515] Some credit rating agencies may decide not to seek registration because, for example, they do not believe that being an NRSRO would benefit them based on their business model. The Commission staff's experience with the expiring no-action letter process of identifying NRSROs provides some support for the conclusion that a substantial number of credit rating agencies may not apply for registration. Specifically, if the number of credit rating agencies has fluctuated over the years from between approximately 150 as of 2000 (*Basel Report*) and 57 as of February 2006 (*DefaultRisk.com*), then a large majority of these firms have not applied to the Commission to be identified as NRSROs under the no-action letter process. It is possible that certain firms that did not seek NRSRO status previously will seek it under Section 15E of the Exchange Act.[516] In addition, the use of QIB certifications as a prerequisite to registration (as opposed to the no-action letter process which evaluated national recognition) also may increase the number of credit rating agencies that are eligible for registration as an NRSRO.

For all these reasons, we estimated that the number of credit rating agencies applying for registration would be larger than the sum of the number of credit rating agencies currently identified as NRSROs plus the handful of entities that requested no-action letters. At the same time, the Commission did not believe that all of the 57 credit rating agencies identified by *DefaultRisk.Com* would apply for, or be granted, registration. Consequently, the Commission estimated that approximately 30 credit rating agencies would be registered as NRSROs under Section 15E of the Exchange Act.[517]

The Commission requested comment on this estimate and whether more or fewer credit rating agencies would be registered as NRSROs. The Commission also requested comment on whether the sources of industry information referenced in the proposing release (the *Basel Report* and the *DefaultRisk.Com* Web site) provided a reasonable basis for arriving at the estimate of 30 NRSROs. The Commission further requested comment on whether there were other industry sources that could provide credible statistics that could be used to determine the number of credit rating agencies that would be registered as NRSROs.

The Commission did not receive any comments in response to these requests. The Commission continues to estimate, for purposes of this PRA, that approximately 30 credit rating agencies will be registered as NRSROs.

D. Total Annual Recordkeeping and Reporting Burden

The Commission estimates the total recordkeeping burden resulting from these rules is approximately 15,722 hours[518] on an annual basis and 21,755 hours[519] on a one-time basis.

The total annual and one-time hour burden estimates are averages across all types of expected NRSROs. The size and complexity of NRSROs will range from small entities to entities that are part of complex global organizations employing thousands of credit analysts. Larger NRSROs generally have established written policies and procedures and recordkeeping systems that comply with a substantial portion of the requirements in the rules. For example, many of the requirements in the rules are consistent with the IOSCO Code, which a number of credit rating agencies have adopted. The Commission assumed in its estimate that these firms would be required to augment or modify existing policies and procedures and recordkeeping systems to comply with the rules.

The Commission further estimated that some smaller entities also have implemented the policies, procedures, and recordkeeping systems that substantially would comply with the proposed rules. Moreover, given their smaller size and simpler structure, the Commission assumed that smaller entities would require significantly fewer hours to comply with a substantial portion of the requirements in the proposed rules.

Consequently, the burden hour estimates in the proposing release were designed to represent the average time across all NRSROs (regardless of size) and taking into account that many firms would only be required to augment existing policies, procedures, and recordkeeping systems and processes to comply with the proposed rules. The Commission noted that, given the significant variance in size between the largest credit rating agencies and the smaller firms, the burden estimates, as averages across all NRSROs, were skewed higher by the largest firms. Furthermore, because the Commission proposed to require additional information in Form NRSRO beyond that prescribed in Section 15E(1)(B) of the Exchange Act,[520] the burden estimates for Rule 17g–1 included estimates arising from requirements of Section 15E of the Exchange Act.[521] The intent was to quantify the incremental burden of complying with these statutory requirements as a result of the additional information that would be required under Rule 17g–1. Thus, the estimates did not seek to capture paperwork burden that would be solely attributable to requirements in Section 15E of the Exchange Act.[522]

The Commission sought comment on whether these factors were reasonably incorporated into the burden estimates. The Commission did not receive any comments in response to this request. The Commission continues to believe that it is appropriate to incorporate these factors into the final estimates, and has done so.

1. Rule 17g–1, Form NRSRO, and Instructions for Form NRSRO

Section 15E(a)(1) of the Exchange Act requires a credit rating agency applying for registration with the Commission to furnish an application containing certain specified information and such other information as the Commission prescribes as necessary or appropriate in the public interest or for the protection of investors.[523] Rule 17g–1[524]

[513] *See http://www.defaultrisk.com ("DefaultRisk.com").*

[514] *Id.*

[515] Section 15E(a)(1) of the Exchange Act makes registration voluntary (15 U.S.C. 78o–7(a)(1)).

[516] 15 U.S.C. 78o–7.

[517] 15 U.S.C. 78o–7.

[518] This total is derived from the total annual hours set forth in the order that the totals appear in the text: 1 + 1,500 + 300 + 1 + 300 + 7,620 + 6,000 = 15,722 hours.

[519] This total is derived from the total one-time hours set forth in the order that the totals appear in the text: 9,000 + 1,200 + 125 + 900 + 9,000 + 50 + 1,500 = 21,775 hours.

[520] 15 U.S.C. 78o–7(a)(1)(B).

[521] 15 U.S.C. 78o–7.

[522] *Id.*

[523] 15 U.S.C. 78o–7(a)(1).

[524] *See* paragraphs (a), (c), and (h) of Rule 17g–1.

implements this statutory provision by requiring a credit rating agency to furnish a completed initial application on Form NRSRO to the Commission to apply to be registered under Section 15E of the Exchange Act.[525] The Commission estimated that the average time necessary to complete the initial Form NRSRO, and compile the various attachments, would be approximately 300 hours per applicant. This estimate was based on staff experience with the current NRSRO no-action letter process.[526] The Commission, therefore, estimated that the total one-time burden to the industry as a result of this requirement would be approximately 9,000 hours.[527]

The Commission did not receive any comments on these specific estimates. The Commission notes that Form NRSRO has been changed to ease the burden of completing the Form. For example, applicants will not be required to provide information about each credit analyst, credit analyst supervisor, and compliance employee that assists the designated compliance officer. As discussed above, we developed these estimates based on the rules as proposed. We continue to believe the estimates are appropriate for the rules as now modified. Indeed, because we have in a variety of respects narrowed the requirements of the rules, we believe the estimates are likely to be conservative. We also note that NRSROs with small staffs will be less impacted by these modifications.

The Commission also noted that an NRSRO likely would engage outside counsel to assist it in the process of completing and submitting a Form NRSRO. The Commission estimated that the amount of time an outside attorney will spend on this work would depend on the size and complexity of the NRSRO. Therefore, the Commission estimated that, on average, an outside counsel would spend approximately 40 hours assisting an NRSRO in preparing its application for registration for a one-time aggregate burden to the industry of 1,200 hours.[528] The Commission further estimated that this work would be split between a partner and associate, with an associate performing a majority of the work. Therefore, the Commission estimated that the average hourly cost for an outside counsel would be approximately $400 per hour. For these reasons, the Commission estimated that the average one-time cost to an NRSRO would be $16,000[529] and the one-time cost to the industry would be $480,000.[530] The Commission did not receive any comments on these specific estimates and continues to believe that they are appropriate. Therefore, the Commission is retaining these estimates without revision.

Rule 17g–1 requires that an NRSRO registered for fewer than the five classes of credit ratings listed in Section 3(a)(62)(B) of the Exchange Act apply to be registered for an additional class by furnishing an amendment on a completed Form NRSRO.[531] The Commission estimated that it would take an NRSRO substantially less time to update the Form NRSRO for this purpose than to prepare the initial application. For example, much of the information on the Form and many of the Exhibits would still be current and not have to be updated. Based on the burden estimate to complete a Form ADV, the Commission estimated that furnishing an application on Form NRSRO for this purpose would take an average of approximately 25 hours per NRSRO.[532]

The Commission further estimated based on staff experience that approximately five of the 30 credit rating agencies expected to register with the Commission would apply to register for additional classes of credit ratings within the first year. The Commission explained that almost all NRSROs would initially apply to register for the first three classes of credit ratings identified in the definition of NRSRO: (1) Financial institutions, brokers, or dealers; (2) insurance companies; and (3) corporate issuers.[533] These are the most common types of credit ratings issued, particularly since some credit rating agencies limit their credit ratings to domestic companies. The Commission explained that, after these three classes, the next largest class of credit ratings for which most NRSROs would be registered would be for credit ratings with respect to issuers of government securities, municipal securities, and foreign government securities.[534] These types of credit ratings take additional expertise. Finally, the Commission explained that the class of credit ratings for which the least number of NRSROs would be registered would be credit ratings of issuers of asset-backed securities (as that term is defined in 17 CFR 229.1101(c)).[535] This assumption was based on the fact that determining a credit rating for an asset-backed security takes specialized expertise beyond that for determining credit ratings of corporate issuers and obligors. For example, it requires analysis of complex legal structures.

For these reasons, the Commission anticipated that some NRSROs might register for less than all five classes of credit ratings. Moreover, these NRSROs, in time, may develop their businesses to include issuing credit ratings in a class for which they are not initially registered. Based on staff experience, the Commission estimated that approximately five of the 30 NRSROs would apply to add another class of credit ratings to their registration within the first year. Therefore, given the 25 hour per NRSRO average burden estimate, the total aggregate one-time burden to the industry for filing the amended Form NRSRO to change the scope of registration was estimated be approximately 125 hours.[536] The Commission did not receive any comments on these specific estimates and continues to believe that they are appropriate. Therefore, the Commission is retaining these estimates without revision.

Rule 17g–1 requires a credit rating agency to provide the Commission with a written notice if it intends to withdraw its application prior to final Commission action.[537] Based on staff experience, the Commission estimated that one credit rating agency per year would withdraw a Form NRSRO prior to final Commission action on the application and, consequently, would furnish a notice of its intent to withdraw the application. Based on current estimates for a broker-dealer to file a notice under Rule 17a–11, the Commission estimated the average burden to an NRSRO to furnish the notice of withdrawal would be one hour.[538] Thus, the Commission estimated that the aggregate annual burden to the industry of providing a

[525] 15 U.S.C. 78o–7.

[526] As a comparison, the proposing release noted that Form ADV, the registration form for investment advisers, is estimated to take approximately 22.25 hours to complete. *See* Investment Advisor Act of 1940 Release No. 2266 (July 20, 2004). The Commission estimated that the hour burden under Rule 17g–1 would be greater, given the substantially larger amount of information that will be required in Form NRSRO.

[527] 300 hours × 30 entities = 9,000 hours.

[528] 40 hours × 30 entities = 1,200 hours.

[529] $400 per hour × 40 hours = $16,000.

[530] $16,000 × 30 NRSROs = $480,000.

[531] *See* paragraphs (c), (d), and (h) of Rule 17g–1.

[532] As noted above, the Commission's burden estimate for Form ADV is approximately 22.25 hours to complete. *See* Investment Advisor Act of 1940 Release No. 2266 (July 20, 2004).

[533] Section 3(a)(62)(B) of the Exchange Act (15 U.S.C. 78c(a)(62)(B)).

[534] Section 3(a)(62)(B)(v) of the Exchange Act (15 U.S.C. 78c(a)(62)(B)(v)).

[535] Section 3(a)(62)(B)(iv) of the Exchange Act (15 U.S.C. 78c(a)(62)(B)(iv)).

[536] 25 hours × 5 NRSROs = 125 hours.

[537] *See* paragraph (d) of Rule 17g–1.

[538] *See* Exchange Act Release No. 49830 (June 8, 2004); *see also* 17 CFR 240.17a–11.

notice of withdrawal prior to final Commission action would be one hour per year.[539] The Commission did not receive any comments on these specific estimates and continues to believe that they are appropriate. Therefore, the Commission is retaining these estimates without revision.

Section 15E(b)(1) of the Exchange Act requires an NRSRO to promptly amend its application for registration if any information or document provided in the application becomes materially inaccurate.[540] Rule 17g–1 requires an NRSRO to comply with this statutory requirement by furnishing the amendment on Form NRSRO.[541] Based on staff experience, the Commission estimated that an NRSRO would file two amendments of its Form NRSRO per year on average. Furthermore, for the reasons discussed above, the Commission estimated that it would take an average of approximately 25 hours to prepare and furnish an amendment on Form NRSRO.[542] Therefore, the Commission estimated that the total aggregate annual burden to the industry to update Form NRSRO would be approximately 1,500 hours each year.[543] The Commission did not receive any comments on these specific estimates and continues to believe that they are appropriate. Therefore, the Commission is retaining these estimates without revision.

Section 15E(b)(2) of the Exchange Act requires an NRSRO to furnish an annual certification.[544] Rule 17g–1 requires an NRSRO to furnish the annual certification on Form NRSRO.[545] The Commission estimated that the annual certification, generally, would take less time than an amendment to Form NRSRO because it would be done on a regular basis (albeit yearly) and, therefore, become more a matter of routine over time. Consequently, the Commission estimated that the burden would be similar to that of broker-dealers filing the quarterly reports required under Rules 17h–1T and 17h–2T, which is approximately 10 hours per year for each respondent.[546] Therefore, the Commission estimated it would take an NRSRO approximately 10 hours to complete the annual certification for a total aggregate annual hour burden to the industry of 300 hours.[547] The Commission did not receive any comments on these specific estimates and continues to believe that they are appropriate. Therefore, the Commission is retaining these estimates without revision.

Rule 17g–1 has been modified to require an NRSRO to furnish the Commission with a withdrawal of registration on Form NRSRO.[548] As proposed, the Commission required a written notice without prescribing the form of the notice. The Commission expects that the furnishing of these withdrawals will be rare, given that only 30 credit rating agencies are expected to register. Based on staff experience, the Commission estimates that one NRSRO per year will withdraw its registration. Further, the instructions to Form NRSRO provide that only the items on the Form are required to be completed in the case of a withdrawal; an NRSRO would not be required to update or attach any of the information required in the Exhibits. Based on current estimates for a broker-dealer to file a notice under Rule 17a–11, the Commission estimates the average burden to an NRSRO to furnish the notice of withdrawal would be one hour.[549] Thus, the Commission estimates that the aggregate annual burden to the industry of providing a notice of withdrawal prior to final Commission action would be one hour per year.[550]

Section 15E(a)(3) of the Exchange Act requires an NRSRO to make certain information and documents submitted in its application publicly available on its Web site, or through another comparable, readily accessible means.[551] Rule 17g–1 requires that this be done within 10 business days of the granting of an NRSRO's registration or the furnishing of an amendment, annual certification, or withdrawal.[552] The Commission believed that each NRSRO already would have a Web site and would choose to use its Web site to comply with Section 15E(a)(3) of the Exchange Act (15 U.S.C. 78o–7(a)(3)). Therefore, based on staff experience, the Commission estimated that, on average, an NRSRO would spend 30 hours to disclose the information in its initial application on its Web site and, thereafter, 10 hours per year to disclose updated information. Accordingly, the total aggregate one-time burden to the industry to make Form NRSRO publicly available would be 900 hours[553] and the total aggregate annual burden would be 300 hours.[554] The Commission did not receive any comments on these specific estimates and continues to believe that they are appropriate. Therefore, the Commission is retaining these estimates without revision.

2. Rule 17g–2

Section 17(a)(1) of the Exchange Act (as amended by the Rating Agency Act)[555] provides the Commission with authority to require an NRSRO to make and maintain such records as the Commission prescribes by rule as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act.[556] Rule 17g–2 implements this rulemaking authority by requiring an NRSRO to make and keep current certain records relating to its business. In addition, the rule requires an NRSRO to preserve these and other records for certain prescribed time periods. This rule is designed to assist the Commission in monitoring, through its examination function, whether NRSROs are complying with the requirements of Section 15E of the Exchange Act[557] and the regulations thereunder. The Commission estimated that the average one-time burden of implementing a recordkeeping system to comply with this rule would be approximately 300 hours. This estimate was based on the Commission's experience with, and burden estimates for, certain recordkeeping requirements of consolidated supervised entities (''CSEs'') subject to Commission supervision.[558]

The Commission also estimated that an NRSRO might be required to purchase recordkeeping system software to establish a recordkeeping system in conformance with the rule. The Commission estimated that the cost of the software would vary based on the size and complexity of the NRSRO. Also, the Commission estimated that some NRSRO's would not require such software because they already have adequate recordkeeping systems or, given their small size, such software would not be necessary. Based on these estimates, the Commission estimated that the average cost for recordkeeping software across all NRSROs would be

[539] 1 hour × 1 entity = 1 hour.

[540] 15 U.S.C. 78o–7(b)(1).

[541] *See* paragraph (e) of Rule 17g–1.

[542] This estimate also is based on the estimates for the collection of information on Rule 17i–2 under the Exchange Act (17 CFR 240.17i–2).

[543] 25 hours per amendment × 2 amendments × 30 NRSROs = 1,500 hours.

[544] 15 U.S.C. 78o–7(b)(2).

[545] *See* paragraph (f) of Rule 17g–1.

[546] *See* 17 CFR 240.17h–1T and 2T.

[547] 10 hour × 30 NRSROs = 300 hours.

[548] *See* paragraph (g) of Rule 17g–1.

[549] *See* Exchange Act Release No. 49830 (June 8, 2004); *see also* 17 CFR 240.17a–11.

[550] 1 hour × 1 entity = 1 hour.

[551] 15 U.S.C. 78o–7(a)(3).

[552] *See* Rule 17g–1(i).

[553] 30 hours × 30 NRSROs = 900 hours.

[554] 10 hours × 30 NRSROs = 300 hours.

[555] *See* Section 5 of the Rating Agency Act.

[556] *See* Section 5 of the Rating Agency Act and 15 U.S.C 78q(a)(1).

[557] 15 U.S.C. 78o–7.

[558] *See* 17 CFR 15c3–1g.

approximately $1000 per firm. Therefore, the one-time cost to the industry would be $30,000.

Additionally, the Commission estimated that the average annual amount of time that an NRSRO would spend to make and maintain these records would be approximately 254 hours per year. The estimate for annual hours was based on the Commission's present estimate for the amount of time it would take a broker-dealer to comply with the recordkeeping rule, Rule 17a–4.[559] Therefore, the Commission estimated that the one-time hour burden for making and preserving the records under proposed Rule 17g–2 would be approximately 9,000 hours[560] and the total annual hour burden would be approximately 7,620 hours per year.[561]

Rule 17g–2 also requires an NRSRO that uses a third-party record custodian to furnish the Commission with an undertaking from the custodian. Based on staff experience, the Commission estimated that approximately five NRSROs would file this undertaking on a one-time basis. The Commission estimated, based on staff experience, it would take an NRSRO approximately 10 hours to process an undertaking prior to furnishing it to the Commission.[562] Therefore, the Commission estimated the total one-time hour burden for these undertakings would be 50 hours.[563]

The Commission did not receive any comments on these specific burden estimates. The Commission notes that Rule 17g–2 has been modified in certain respects that decrease the burden, but also in other respects that will increase burden. For example, requirements to make records identifying the methodology used to determine each credit rating and how the credit rating was made readily available have been eliminated. Further, the retention periods for all the records have been harmonized and the requirement for a non-resident NRSRO to furnish an undertaking has been eliminated. On the other hand, the rule now requires an NRSRO to document its methodologies for determining credit ratings and, if applicable, to make and retain certain records relating to practices with respect to rating structured products. The Commission believes that these adjustments will largely offset each other or result in a net decrease in burden. For example, the elimination of the requirement to identify the methodology used to determine a credit rating would have impacted all NRSROs and required them to make a record for each credit rating (which could be in the many thousands). Conversely, the requirements with respect to structured products only will impact NRSROs that rate these types of securities, which the Commission estimates is less than five. While the Commission could reduce its burden estimate, it is taking a conservative approach to the net results of these changes. For these reasons, the Commission is retaining the rule's overall burden estimates without revision.

3. Rule 17g–3

Section 15E(k) of the Exchange Act requires an NRSRO to furnish to the Commission, on a confidential basis and at intervals determined by the Commission, such financial statements and information concerning its financial condition that the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.[564] The section also provides that the Commission may, by rule, require that the financial statements be certified by an independent public accountant.[565]

Rule 17g–3 implements this statutory provision by requiring an NRSRO to furnish financial reports to the Commission. We estimated that, on average, it would take an NRSRO approximately 200 hours to prepare for and file the annual financial reports. This estimate was based on the current PRA estimates used for CSEs under Appendix G to Exchange Act Rule 15c3–1, as well as the PRA estimates for supervised investment bank holding companies under Rule 17i–5.[566] Therefore, the Commission estimated that the total annual hour burden to prepare and furnish annual audited financial statements with the Commission would be approximately 6,000 hours.[567]

To comply with Rule 17g–3, an NRSRO would be required to engage the services of an independent public accountant. The Commission estimated that the cost of hiring an accountant would vary substantially based on the size and complexity of the NRSRO. For example, the Commission noted that, based on staff experience, the annual audit costs of a small broker-dealer generally range from $3,000 to $5,000 per year. The Commission estimated that the annual audit costs for a small NRSRO would be comparable. The costs for a large NRSRO would be much greater. However, many of these firms already are audited by a public accountant for other regulatory purposes. For these reasons, the Commission estimated that the average annual cost across all NRSROs to engage the services of an independent public accountant would be approximately $15,000. Therefore, the annual cost to the industry would be $450,000.[568]

The Commission did not receive any comments on these specific estimates. The Commission notes that Rule 17g–3 has been modified to decrease the burden. For example, the requirement to comply with all provisions of Regulation S–X has been eliminated, as has the requirement to have the information in the proposed schedules audited. As discussed above, we developed these estimates based on the rule as proposed. We continue to believe the estimates are appropriate for the rule as now modified. Indeed, because we have in a variety of respects narrowed the requirements of the rule, we believe the estimates are likely to be conservative.

4. Rule 17g–4

Section 15E(g)(1) of the Exchange Act[569] requires an NRSRO to establish, maintain, and enforce written policies and procedures to prevent the misuse of material, nonpublic information in violation of the Exchange Act.[570] Section 15E(g)(2) of the Exchange Act provides that the Commission shall adopt rules requiring an NRSRO to establish specific policies and procedures to prevent the misuse of material, non-public information.[571] Rule 17g–4 implements this statutory provision by requiring that an NRSRO's policies and procedures established pursuant to Section 15E(g)(1) of the Exchange Act[572] include three specific types of procedures.

[559] *See* 17 CFR 240.17a–4 (recordkeeping requirements for broker-dealers). This rule has previously been subject to notice and comment and has been approved by OMB. The Commission noted in the proposing release that Rule 17g–2 is based, in part, on Exchange Act Rules 17a–3 (17 CFR 240.17a–3) and 17a–4 (17 CFR 240.17a–4). The annual hour burden estimate for the rule, however, was based only on the PRA estimate for Rule 17a–4. The rule requires substantially less records to be made and maintained than Rules 17a–3 and 17a–4. Therefore, the Commission based its estimate only on the estimate for Rule 17a–4 (as opposed to Rules 17a–3 and 17a–4 combined).

[560] 300 hours × 30 NRSROs = 9,000 hours.

[561] 254 hours × 30 NRSROs = 7,620 hours.

[562] The estimated 10 hours includes drafting, legal review and receiving corporate authorization to file the undertaking with the Commission.

[563] 10 hours × 5 NRSROs = 50 hours.

[564] 15 U.S.C. 78o–7(k). An applicant can request that the Commission keep this information confidential. *See* 17 CFR 200.80 and 17 CFR 200.83.

[565] *Id.*

[566] *See* 17 CFR 240.15c3–1g and 17 CFR 240.17i–5.

[567] 200 hours × 30 NRSROs = 6,000 hours.

[568] $15,000 × 30 NRSROs = $450,000.

[569] 15 U.S.C. 78o–7(g)(1).

[570] 15 U.S.C. 78a *et seq.*

[571] 15 U.S.C. 78o–7(g)(2).

[572] 15 U.S.C. 78o–7(g)(1).

The Commission assumed that most credit rating agencies already have procedures in place to address the specific misuses of material nonpublic information identified in Rule 17g–4.[573] Nonetheless, the Commission anticipated that some NRSROs might need to modify their procedures to comply with the rule. Based on staff experience, the Commission estimated that it would take approximately 50 hours for an NRSRO to establish procedures in conformance with the rule for a total one-time burden of 1,500 hours.[574] The Commission did not receive any comments on these specific estimates and continues to believe that they are appropriate. Therefore, the Commission is retaining these estimates without revision.

E. Collection of Information Is Mandatory

These recordkeeping and notice requirements are mandatory.

F. Confidentiality

Pursuant to section 15E(a)(1)(B) of the Exchange Act, certain information collected in Form NRSRO required under Rule 17g–1(a) will not be confidential. However, credit rating agencies and NRSROs may seek confidential treatment of information furnished to the Commission under existing rules, and the Commission will keep this information confidential to the extent permitted by law. The books and records information collected under Rules 17g–2 and 17g–4 will be stored by the NRSRO and made available to the Commission and its representatives as required in connection with examinations, investigations, and enforcement proceedings.

The information collected under Rule 17g–3 (the annual financial reports) will be generated from the internal records of the NRSRO. Pursuant to Section 15E(k) of the Exchange Act, the annual financial reports will be furnished to the Commission on a confidential basis, to the extent permitted by law.[575]

G. Record Retention Period

Paragraph (c) of Rule 17g–2 requires an NRSRO to retain the records for at least three years.

H. Request for Comment

The Commission requested comment on the collections of information in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (4) evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and (5) evaluate whether the proposed rules would have any effects on any other collection of information not previously identified in this section.

VI. Costs and Benefits of the Rules

The Commission is sensitive to the costs and benefits that result from its rules. The Commission identified certain costs and benefits arising from these rules and requested comment on all aspects of the cost-benefit analysis contained therein, including identification and assessment of any costs and benefits not discussed in the analysis.[576] The Commission sought comment and data on the value of the benefits identified. The Commission also elicited comment on the accuracy of the cost estimates in each section of the cost-benefit analysis, and requested those commenters to provide data so the Commission could improve the cost estimates, including identification of industry statistics relied on by commenters to reach conclusions on cost estimates. The Commission also sought comment on the extent to which costs were attributable to requirements set forth in Section 15E of the Exchange Act,[577] rather than the rules. Finally, the Commission requested estimates and views regarding the costs and benefits for particular types of market participants, as well as any other costs or benefits that might result from the rules.

As discussed below, the Commission received very limited comment on the cost-benefit analysis in the proposing release. Except as discussed below, the Commission continues to believe that the specific estimates are appropriate and is retaining these estimates generally without revision.

A. Benefits

The purposes of the Credit Rating Agency Reform Act of 2006 (the ''Rating Agency Act'') [578] are to improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating industry.[579] As the Senate Report states, the Rating Agency Act establishes ''fundamental reform and improvement of the designation process,'' and ''eliminating the artificial barrier to entry will enhance competition and provide investors with more choices, higher quality ratings, and lower costs.'' [580]

To these ends, the Rating Agency Act establishes—through statutory provisions and the grant of Commission rulemaking authority—a regulatory program for credit rating agencies opting to have their credit ratings qualify for purposes of laws and rules using the term ''NRSRO.'' Specifically, the Rating Agency Act sets out a voluntary mechanism for credit rating agencies to register with the Commission as an NRSRO.[581] It requires an NRSRO to make public certain information to help users of credit ratings assess the NRSRO's credibility and compare the NRSRO with other NRSROs.[582] The Rating Agency Act also requires an NRSRO to furnish the Commission with periodic financial reports.[583] Further, the Rating Agency Act requires an NRSRO to implement policies to manage the handling of material non-

[573] For example, the IOSCO Code requires credit rating agencies to develop such procedures.

[574] 50 hours × 30 NRSROs = 1,500 hours.

[575] 15 U.S.C. 78o–7(k).

[576] For the purposes of this cost/benefit analysis, the Commission is using salary data from the *SIA Report on Management and Professional Earnings in the Securities Industry 2005* (''SIA Management Report 2005''), which provides base salary and bonus information for middle-management and professional positions within the securities industry. The positions in the report are divided into the following categories: Accounting, Administration & Finance, Compliance, Customer Service, Floor/Trading, Human Resources Management, Internal Audit, Legal, Marketing/Corporate Communications, New Business Development, Operations, Research, Systems/Technology, Wealth Management, and Business Continuity Planning. The Commission believes that the salaries for these securities industry positions would be comparable to the salaries of similar positions in the credit rating industry. The Commission also notes that it is using salaries for New York-based employees, which tend to be higher than the salaries for comparable positions located outside of New York. This conservative approach is intended to capture unforeseen costs. Finally, the salary costs derived from the SIA Management Report 2005 and referenced in this cost benefit section, are modified to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[577] 15 U.S.C. 78o–7.

[578] Pub. L. 109–291 (2006).

[579] *See Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 3850,* Credit Rating Agency Reform Act of 2006, S. Report No. 109–326, 109th Cong., 2d Sess. (Sept. 6, 2006) (''Senate Report'').

[580] *Id.*

[581] Section 15E of the Exchange Act (15 U.S.C. 78o–7).

[582] Sections 15E(a)(1) and (b)(1) of the Exchange Act (15 U.S.C. 78o–7(a)(1) and (b)(1)).

[583] Section 15E(k) of the Exchange Act (15 U.S.C. 78o–7(k)).

public information and conflicts of interest.[584] Pursuant to authority under the Rating Agency Act, the Commission must prohibit certain acts and practices the Commission finds to be unfair, coercive, or abusive.[585]

The rules the Commission is adopting under the Rating Agency Act are being issued pursuant to specific statutory mandates and grants of rulemaking authority. They are designed to further the goals of the Rating Agency Act, including fostering ''competition in the credit rating agency business.'' [586] The practice of identifying NRSROs through staff no-action letters has been criticized as a process that lacks transparency and creates a barrier for credit rating agencies seeking wider recognition and market share. The Commission believes that these rules further the goal of increasing competition because they provide credit rating agencies with a transparent process to apply for registration as an NRSRO that does not favor a particular business model or larger, established firms. This will make it easier for more credit rating agencies to apply for registration. Increased competition in the credit ratings business could lower the cost to issuers, obligors, and underwriters of obtaining credit ratings.

In addition, the Rating Agency Act requires NRSROs to make their credit ratings and information about themselves available to the public. Part of the Rating Agency Act's definition of ''credit rating agency'' is that the entity must be in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee.[587] Under the Rating Agency Act and the rules adopted thereunder, an NRSRO will be required to disclose information about its credit ratings performance statistics, its methods for determining credit ratings, its organizational structure, its procedures to prevent the misuse of material non-public information, the conflicts of interest that arise from its business activities, its code of ethics, and the qualifications of its credit analysts and credit analyst supervisors. The Commission believes that these disclosures will allow users of the credit ratings to compare the credit ratings quality of different NRSROs. Although the information an NRSRO will provide on its Form NRSRO and to comply with the rules cannot substitute for an investor's due diligence in evaluating a credit rating, it will aid investors by providing a publicly accessible foundation of basic information about an NRSRO.

In addition, the rules implement provisions of the Rating Agency Act that are designed to improve the integrity of NRSROs. For example, the registration of a credit rating agency as an NRSRO will allow the Commission to conduct regular examinations of the credit rating agency to evaluate compliance with the regulatory scheme set forth in Section 15E of the Exchange Act [588] and the rules thereunder and will subject an NRSRO to disclosure, recordkeeping, and annual financial reporting requirements, as well as requirements regarding the prevention of misuse of material, nonpublic information, the management of conflicts of interest, and certain prohibited acts and practices. Increased confidence in the integrity of NRSROs and the credit ratings they issue could promote participation in the securities markets. Better quality ratings could also reduce the likelihood of an unexpected collapse of a rated issuer or obligor, reducing risks to individual investors and to the financial markets. In addition to improving the quality of credit ratings, increased oversight of NRSROs could increase the accountability of an NRSRO to its subscribers, investors, and other persons who rely on the credibility and objectivity of credit ratings in making an investment decision.

Rule 17g–1 prescribes a process for a credit rating agency to register with the Commission as an NRSRO. The rule requires a credit rating agency to apply for registration using Form NRSRO. Form NRSRO requires that a credit rating agency provide information required under Section 15E(a)(1)(B) of the Exchange Act and certain additional information.[589] The additional information will assist the Commission in making the assessment regarding financial and managerial resources required under Section 15E(a)(2)(C)(ii)(I) of the Exchange Act.[590] This section directs the Commission to grant a credit rating agency's application for registration as an NRSRO unless, among other things, the Commission finds that the applicant does not have adequate financial and managerial resources to consistently issue ratings with integrity and to materially comply with its procedures and methodologies disclosed under Sections 15E(a)(1)(B) of the Exchange Act [591] and with the requirements in Sections 15E(g), (h), (i) and (j) of the Exchange Act.[592] Certain other additional information required to be made public will assist users of credit ratings in assessing the credibility of the NRSRO and in comparing the NRSRO with other NRSROs.

Rule 17g–2 implements the Commission's recordkeeping and rulemaking authority under Section 17(a) of the Exchange Act [593] by requiring an NRSRO to make and retain certain records related to its business as a credit rating agency. This recordkeeping rule will assist the Commission in monitoring whether an NRSRO is complying with provisions of Section 15E of the Exchange Act and the rules thereunder by requiring information about each NRSRO's financial condition, management, and operations. This information will permit the Commission to observe differences between NRSROs and changes over time in individual NRSROs. The information also will permit the Commission to review whether an NRSRO is operating consistently with the methodologies and procedures it establishes to determine credit ratings and its policies and procedures designed to ensure the impartiality of its credit ratings.

Section 15E(k) of the Exchange Act requires an NRSRO to furnish to the Commission, on a confidential basis and at intervals determined by the Commission, such financial statements and information concerning its financial condition that the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.[594] The section also provides that the Commission may, by rule, require that an independent public accountant certify the financial statements.[595] Rule 17g–3 implements this rulemaking authority by requiring an NRSRO to furnish annual financial reports to the Commission. This rule will enhance Commission oversight of an NRSRO. Specifically, it will aid the Commission in monitoring whether the initiation of a proceeding under Section 15E(d) of the Exchange Act will be appropriate because the NRSRO ''fails to maintain adequate financial and managerial resources to consistently produce credit

[584] Sections 15E(g) and (h) of the Exchange Act (15 U.S.C. 78o–7(g) and (h)).

[585] Section 15E(i) of the Exchange Act (15 U.S.C. 78o–7(i)).

[586] *See Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 3850,* Credit Rating Agency Reform Act of 2006, S. Report No. 109–326, 109th Cong., 2d Sess. (Sept. 6, 2006) (''Senate Report'').

[587] Section 3(a)(61) of the Exchange Act (15 U.S.C. 78c(a)(61)).

[588] 15 U.S.C. 78o–7.

[589] *See* Section 15E(a)(1)(B) of the Exchange Act (15 U.S.C. 78o–7(a)(1)(B)).

[590] *See* 15 U.S.C. 78o–7(a)(2)(C)(ii)(I).

[591] 15 U.S.C. 78o–7(a)(1)(B).

[592] 15 U.S.C. 78o–7(g), (h), (i) and (j).

[593] 15 U.S.C. 78q(a)(1).

[594] 15 U.S.C. 78o–7(k).

[595] *Id.*

ratings with integrity.'' [596] In addition, the financial reports also will assist the Commission in monitoring potential conflicts of interests of a financial nature arising from the operation of an NRSRO.[597]

Section 15E(g)(1) of the Exchange Act [598] requires an NRSRO to establish, maintain, and enforce written policies and procedures to prevent the misuse of material, nonpublic information in violation of the Exchange Act.[599] Section 15E(g)(2) of the Exchange Act provides that the Commission shall adopt rules requiring an NRSRO to establish specific policies and procedures to prevent the misuse of material, nonpublic information.[600] Rule 17g–4 implements this statutory provision by requiring that an NRSRO's policies and procedures established pursuant to Section 15E(g)(1) of the Exchange Act [601] include three specific types of procedures. These specific procedures establish a baseline for the type of procedures an NRSRO must implement to meet the statutory requirement in Section 15E(g) of the Exchange Act.[602] By providing this baseline, the rule is designed to ensure that an NRSRO establishes adequate procedures and controls to protect material nonpublic information.

Rule 17g–5 implements Section 15E(h)(2) of the Exchange Act [603] by requiring an NRSRO to disclose and manage certain conflicts of interest, as well as specifically prohibiting other conflicts of interest. This rule will promote the disclosure and management of conflicts of interest required by Sections 15E(a)(1)(B)(vi) and 15E(h) of the Exchange Act and mitigate potential undue influences on an NRSRO's credit rating process.[604]

Rule 17g–6 prohibits an NRSRO from engaging in certain unfair, abusive, or coercive acts or practices. These prohibitions are designed to enhance the integrity of NRSROs, promote competition and fulfill a statutory mandate.

The Commission requested comment on available metrics to quantify these benefits and any other benefits the commenter may identify, including the identification of sources of empirical data that could be used for such metrics. The Commission did not receive any comments in response to this request.

B. Costs

The Rating Agency Act requires that the rules and regulations that the Commission may prescribe ''be narrowly tailored'' to meet its requirements.[605] The rules being adopted by the Commission are designed to adhere to this statutory mandate and, thereby, keep compliance costs as low as possible.

The cost of compliance to a given NRSRO will depend on its size and the complexity of its business activities. As discussed above, the size and complexity of credit rating agencies varies significantly. Therefore, it is difficult to quantify a cost per NRSRO. Instead, the Commission provided estimates of the average cost per NRSRO taking into consideration the range in size and complexity of NRSROs and the fact that many already may have established policies, procedures, and recordkeeping systems and processes that will comply substantially with the requirements.

The Commission believes that larger NRSROs generally already have established written policies and procedures and recordkeeping systems that will comply with a substantial portion of the requirements in the rules. Many of the requirements in the rules are consistent with the IOSCO Code principles, which a number of credit rating agencies (including the largest) have implemented. These firms will be required to augment or modify existing policies and procedures and recordkeeping systems to comply with the rules (rather than establish new ones). Some smaller credit rating agencies also have implemented the policies, procedures, and recordkeeping systems necessary to comply with the rules. Moreover, given their smaller size and simpler structure, smaller entities will require less effort and incur less cost to comply with a substantial portion of the requirements in these rules.

For these reasons, the cost estimates represent the average cost across all NRSROs (regardless of size) and take into account that many firms will only be required to augment existing policies, procedures, and recordkeeping systems and processes to come into compliance with the rules. Furthermore, as discussed with respect to the Paperwork Reduction Act of 1995 (''PRA''),[606] the Commission is requiring additional information in Form NRSRO beyond that prescribed in Section 15E(1)(B) of the Exchange Act.[607] Therefore, the cost estimates for Rule 17g–1 include estimates that arise from requirements imposed by Section 15E of the Exchange Act.[608] The intent is to quantify the incremental burden of complying with these statutory requirements as a result of the additional information that will be required under Rule 17g–1. Thus, those estimates do not seek to capture costs that are solely attributable to requirements in Section 15E of the Exchange Act.[609]

The Commission requested commenters to provide data for the costs that would be solely attributable to the requirements of Section 15E of the Exchange Act. The Commission received one comment from an entity that the overall cost of complying with the rules would be $207,515.[610] The commenter did not provide any further detail on how these costs would be solely attributable to the Commission's proposed rules (as opposed to provisions of the Rating Agency Act).[611] The commenter also did not identify the specific costs that would arise from each discreet rule provision.[612] The Commission believes that the estimated costs the commenter would incur if registered as an NRSRO are included in the cost estimates discussed below.

Given the estimates set forth below, the Commission estimates that the total one-time estimated cost to NRSROs resulting from these rule proposals would be approximately $4,936,325 [613] and the total estimated annual cost to NRSROs resulting from these rule proposals would be approximately $3,955,500 per year.[614]

1. Rule 17g–1, Form NRSRO and Instructions to Form NRSRO

Section 15E(a)(1) of the Exchange Act requires a credit rating agency applying for registration with the Commission to furnish an application containing certain specified information and such other information as the Commission prescribes as necessary or appropriate in the public interest or for the protection

[596] 15 U.S.C. 78o–7(d).

[597] *See, e.g.*, Rule 17g–5(c)(1) prohibiting an NRSRO from issuing or maintaining a credit rating for a person that, in the most recently ended fiscal year, provided the NRSRO with net revenue equaling or exceeding 10% of the NRSRO's total revenue for the year.

[598] 15 U.S.C. 78o–7(g)(1).

[599] 15 U.S.C. 78a *et seq.*

[600] 15 U.S.C. 78o–7(g)(2).

[601] 15 U.S.C. 78o–7(g)(1).

[602] 15 U.S.C. 78o–7(g).

[603] 15 U.S.C. 78o–7(h)(2).

[604] 15 U.S.C. 78o–7(a)(1)(B)(vi) and (h).

[605] 15 U.S.C. 78o–7(c)(2).

[606] 44 U.S.C. 3501 *et seq.* 5 CFR 1320.11.

[607] 15 U.S.C. 78o–7(a)(1)(B).

[608] 15 U.S.C. 78o–7.

[609] *Id.*

[610] *See* Lace Letter.

[611] *Id.*

[612] *Id.*

[613] This total is derived from the total one-time costs set forth in the order that they appear in the text: $2,007,000 + $480,000 + $25,625 + $241,200 + $1,845,000 + $30,000 + $307,500 = $4,936,325.

[614] This total is derived from the total annual costs set forth in the order that they appear in the text: $307,500 + $61,500 + $80,400 + $1,562,100 + $1,494,000 + $450,000 = $3,955,500.

of investors.[615] Rule 17g–1 [616] implements this statutory provision by requiring a credit rating agency to furnish an initial application on a completed Form NRSRO to apply to be registered under section 15E of the Exchange Act.[617]

NRSROs will incur costs to register under Section 15E of the Exchange Act and Rule 17g–1.[618] As discussed above with respect to PRA, the Commission estimates that an NRSRO will spend approximately 300 hours to complete and furnish an initial Form NRSRO. Also, as discussed with respect to the PRA, the Commission estimates there will be 30 NRSROs. For these reasons, the Commission estimates that the average one-time cost to an NRSRO will be $66,900 [619] and the total aggregate one-time cost to the industry will be $2,007,000.[620]

Also, as discussed with respect to the PRA, the Commission anticipates that an NRSRO likely will engage outside counsel to assist in the process of completing and submitting a Form NRSRO. The amount of time an outside attorney will spend on this work will depend on the size and complexity of the NRSRO. Therefore, the Commission estimates that, on average, an outside counsel will spend approximately 40 hours assisting an NRSRO in preparing its application for registration. The Commission further estimates that this work will be split between a partner and associate, with an associate performing a majority of the work. Therefore, the Commission estimates that the average hourly cost for an outside counsel will be approximately $400 per hour. For these reasons, the Commission estimates that the average one-time cost to an NRSRO will be $16,000 [621] and the one-time cost to the industry will be $480,000.[622]

Under Rule 17g–1, an NRSRO applying to be registered for an additional class of credit ratings will be required to file an amended Form NRSRO with the Commission.[623] As discussed with respect to the PRA, the Commission estimates, on average, an NRSRO will spend 25 hours completing and furnishing a Form NRSRO for this purpose. The Commission also estimates with respect to the PRA that five of the 30 NRSROs will apply to register for an additional class of credit ratings. For these reasons, the Commission estimates that the average one-time cost to an NRSRO will be $5,125 [624] and the total aggregate one-time cost to the industry will be $25,625.[625]

Section 15E(b)(1) of the Exchange Act requires an NRSRO to promptly amend its application for registration if any information or document provided in the application becomes materially inaccurate.[626] Rule 17g–1 requires an NRSRO to comply with this statutory requirement by furnishing the amendment on Form NRSRO.[627] As discussed with respect to the PRA, the Commission estimates that an NRSRO will furnish two amendments on Form NRSRO per year on average. The Commission also estimates with respect to the PRA that it will take approximately 25 hours to prepare and furnish an amendment and that there will be 30 NRSROs. For these reasons, the Commission estimates that the average annual cost to an NRSRO will be $10,250 [628] and the total aggregate annual cost to the industry will be $307,500.[629]

Section 15E(b)(2) of the Exchange Act requires an NRSRO to furnish an annual certification.[630] Rule 17g–1 will require an NRSRO to furnish the annual certification on Form NRSRO.[631] As discussed with respect to the PRA, the Commission estimates an NRSRO will spend approximately 10 hours per year completing and furnishing the annual certification and that there will be 30 NRSROs. For these reasons, the Commission estimates that the average annual cost to an NRSRO will be $2,050 [632] and the total aggregate annual cost to the industry will be $61,500.[633]

Section 15E(a)(3) of the Exchange Act requires an NRSRO to make certain information and documents submitted in its application publicly available on its Web site, or through another comparable, readily accessible means.[634] Rule 17g–1 requires that this be done within 10 business days of the granting of an NRSRO's application or the furnishing of an amendment to the form or annual certification.[635] As discussed with respect to the PRA, the Commission estimates that the average hour burden for an NRSRO to disclose this information on its Web site will be approximately 30 hours on a one-time basis and 10 hours per year. Furthermore, as discussed with respect to the PRA, the Commission estimates that there will be 30 NRSROs. For these reasons, the Commission estimates that an NRSRO will incur an average one-time cost of $8,040 and an average annual cost of $2,680.[636] Consequently, the total aggregate one-time cost to the industry will be $241,200 [637] and total aggregate annual cost to the industry will be $80,400 per year.[638]

The Commission believes the requirements in Rule 17g–1 to furnish a notice on Form NRSRO when an NRSRO withdraws its registration will result in *de minimis* costs.

The Commission requested comment on these cost estimates. We also requested comment on whether there would be costs in addition to those identified above, such as costs arising from systems changes. Comment also was sought on whether these requirements would impose costs on other market participants, including persons who use credit ratings to make investment decisions or for regulatory purposes, and persons who purchase services and products from NRSROs. Commenters were asked to identify the

[615] 15 U.S.C. 78o–7(a)(1).

[616] *See* paragraphs (a), (c) and (h) of Rule 17g–1.

[617] 15 U.S.C. 78o–7.

[618] There is no filing fee for a Form NRSRO.

[619] The Commission estimates that a credit rating agency will have a senior compliance examiner perform these responsibilities. The SIA Management Report 2005 (Senior Compliance Examiner) indicates that the average hourly cost for a senior compliance examiner is $223. Therefore, the average one-time cost per NRSRO will be approximately $66,900 [(300 hours) × ($223 per/hour)].

[620] 30 NRSROs × $66,900 = $2,007,000.

[621] $400 per hour × 40 hours = $16,000.

[622] $16,000 × 30 NRSROs = $480,000.

[623] *See* paragraph (b) of Rule 17g–1.

[624] The Commission estimates an NRSRO will have a senior compliance person perform these responsibilities. The SIA Management Report 2005 (Compliance Officer) indicates that the average hourly cost for a compliance manager is $205. Therefore, the average cost to an NRSRO will be $5,125 [(25 hours for one year) × ($205)].

[625] 5 NRSROs × $5,125 = $25,625.

[626] 15 U.S.C. 78o–7(b)(1).

[627] *See* paragraph (e) of Rule 17g–1.

[628] Based on the PRA estimates, an NRSRO will spend approximately 50 hours each year updating its application on Form NRSRO (25 hours per amendment × two amendments). The Commission estimates an NRSRO will have a senior compliance person perform these responsibilities. The SIA Management Report 2005 (Compliance Officer) indicates that the average hourly cost for a compliance manager is $205. Therefore, the total average annual cost to an NRSRO to update its registration on Form NRSRO will be $10,250 [(50 hours per year) × ($205 per hour)].

[629] $10,250 × 30 NRSROs = $307,500.

[630] 15 U.S.C. 78o–7(b)(2).

[631] *See* paragraph (f) Rule 17g–1.

[632] The Commission estimates an NRSRO will have a senior compliance person perform these responsibilities. The SIA Management Report 2005 (Compliance Officer) indicates that the average hourly cost for a compliance manager is $205. Therefore, the average annual cost will be $2,050 [(10 hours per year) × ($205 per hour)].

[633] $2,050 × 30 NRSROs = $61,500.

[634] 15 U.S.C. 78o–7(a)(3).

[635] *See* paragraph (i) of Rule 17g–1.

[636] The Commission estimates that an NRSRO will have a Senior Programmer perform this work. The SIA Management Report 2005 (Senior Programmer) indicates that the average hourly cost for a senior programmer is $268. Therefore, the average one-time cost will be $8,040 [(30 hours) × ($268 per hour)] and the average annual cost will be $2,680 [(10 hours per year) × ($268 per hour)].

[637] $8,040 × 30 NRSROs = $241,200.

[638] $2,680 × 30 NRSROs = $80,400.

metrics and sources of any empirical data that supported their costs estimates. The Commission did not receive any comments in response to these requests.

2. Rule 17g–2

Section 17(a)(1) of the Exchange Act[639] provides the Commission with authority to require an NRSRO to make and maintain such records as the Commission prescribes by rule as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act.[640] Rule 17g–2 implements this rulemaking authority by requiring an NRSRO to make and preserve specified records related to its credit rating business.

As discussed with respect to the PRA, the Commission estimates that an NRSRO, on average, will spend approximately 300 hours on a one-time basis to establish a recordkeeping system and 254 hours each year updating its books and records. For these reasons, the Commission estimates that an NRSRO will incur an average one-time cost of $61,500 and an average annual cost of $52,070.[641] Consequently, the total aggregate one-time cost to the industry will be $1,845,000,[642] and the total aggregate annual cost to the industry will be $1,562,100 per year.[643]

Furthermore, as discussed above with respect to the PRA, the Commission also estimates that an NRSRO may be required to purchase recordkeeping system software to establish a recordkeeping system in conformance with the rule. The Commission estimates that the cost of the software will vary based on the size and complexity of the NRSRO. Also, the Commission estimates that some NRSROs will not require such software because they already have adequate recordkeeping systems or, given their small size, such software will not be necessary. Based on these estimates, the Commission estimates that the average cost for recordkeeping software across all NRSROs will be approximately $1,000 per firm. Therefore, the one-time cost to the industry will be $30,000.[644]

The Commission requested comment on these cost estimates. We also requested comment on whether there would be costs in addition to those identified above, such as costs arising from restructuring business practices. Comment also was sought on whether these rules would impose costs on other market participants, including persons who use credit ratings to make investment decisions or for regulatory purposes, and persons who purchase services and products from NRSROs. Commenters were asked to identify the metrics and sources of any empirical data that supported their costs estimates. The Commission did not receive any comments in response to these requests.

3. Rule 17g–3

Section 15E(k) of the Exchange Act requires an NRSRO to furnish to the Commission, on a confidential basis[645] and at intervals determined by the Commission, such financial statements and information concerning its financial condition that the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.[646] The section also provides that the Commission may, by rule, require that the financial statements be certified by an independent public accountant.[647]

Rule 17g–3 implements this statutory provision by requiring an NRSRO to furnish annual financial reports to the Commission. As discussed above with respect to the PRA, the Commission estimates that an NRSRO, on average, will spend approximately 200 hours per year preparing for and furnishing these financial reports. For these reasons, the Commission estimates that the average annual cost to an NRSRO will be $49,800[648] and the total aggregate annual cost to the industry will be $1,494,000.[649]

As noted above, the average one-time and annual costs to NRSROs will vary widely depending on the size and complexity of the NRSRO. Moreover, some large credit rating agencies already prepare audited financial statements in accordance with other regulatory requirements. Nonetheless, these credit rating agencies may be required to make changes to their accounting systems to comply with the requirements in Rule 17g–3. The Commission believes these costs will vary depending on the size and complexity of the NRSRO. The Commission sought comment on the costs that would be incurred to make changes to their accounting systems.

The Commission received one comment in response to this specific request from a large credit rating agency.[650] The commenter stated that it would cost between $6 and $8 million to develop a system that could capture revenues received by the credit rating agency and its affiliates from customers in order to create the list of large customers that could be audited.[651] The Commission notes, as an initial matter, that Section 15E(a)((B)(viii) of the Exchange Act requires an NRSRO to create this list with respect to issuers and subscribers.[652] Consequently, the costs of developing a system that can capture this information can largely be attributed to the statute. Nonetheless, Rule 17g–3 has been modified in ways that the Commission believes will largely reduce these costs. First, an NRSRO is not required to include revenue received by affiliates that are not part of the credit rating organization in determining this list. Second, the list is now a separate financial report that is not required to be audited. Third, the definition of net revenue was modified to refer to revenues ''earned'' by the NRSRO (as opposed to revenues ''received''). This is designed to provide flexibility so that each NRSRO can define ''revenues'' consistent with how its accounting system recognizes revenues. The Commission believes these modifications significantly reduce the operational difficulties in determining the list of large customers.

As discussed above with respect to the PRA, an NRSRO will be required to engage the services of independent public accountant to comply with Rule 17g–3. The cost of hiring an account will vary substantially based on the size and complexity of the NRSRO. As the noted above, based on staff experience, the annual audit costs of a small broker-dealer generally range from $3,000 to $5,000 a year. As the Commission estimated above, the annual audit costs for a small NRSRO will likely be comparable to the costs incurred by a

[639] *See* Section 5 of the Rating Agency Act and 15 U.S.C. 78q(a)(1).

[640] *Id.*

[641] The Commission estimates that an NRSRO will have a compliance manager perform these responsibilities. The SIA Management Report 2005 indicates that the average hourly cost for a compliance manager is $205. Therefore, the average one-time cost will be $61,500 [(300 hours) × ($205 per hour)] and the average annual cost will be $52,070 [(254 hours per year) × ($205 per hour)].

[642] $61,500 × 30 NRSROs = $1,845,000.

[643] $52,070 × 30 NRSROs = $1,562,100.

[644] $1,000 × 30 NRSROs = $30,000.

[645] An applicant can request that the Commission keep this information confidential to the extent permitted by law. *See* 17 CFR 200.80 and 17 CFR 200.83.

[646] 15 U.S.C. 78o–7(k).

[647] *Id.*

[648] The Commission estimates that a senior internal auditor will perform these responsibilities. The SIA Management Report 2005 (Senior Internal Auditor) indicates that the average hourly cost for a senior internal auditor is $249. Therefore, the average annual cost will be $49,800 [(200 hours per year) × ($249 per hour)].

[649] $49,800 × 30 NRSROs = $1,494,000.

[650] *See* Fitch Letter.

[651] *Id.*

[652] 15 U.S.C. 78o–7(a)(1)(B)(viii).

small broker-dealer. The costs for a large NRSRO will be much greater. However, many of these firms already are audited by a public accountant for other regulatory purposes. For these reasons, the Commission estimates that the average annual cost across all NRSROs to engage the services of an independent public account will be approximately $15,000. Therefore, the annual cost to the industry will be $450,000.[653]

The Commission requested comment on these cost estimates. We also requested comment on whether there would be costs in addition to those identified above. Comment was sought on whether these requirements would impose costs on other market participants, including persons who use credit ratings to make investment decisions or for regulatory purposes, and persons who purchase services and products from NRSROs. Commenters were asked to identify the metrics and sources of any empirical data that supported their costs estimates. Other than the one comment discussed above, the Commission did not receive any comments in response to these requests.

4. Rule 17g–4

Section 15E(g)(1) of the Exchange Act[654] requires an NRSRO to establish, maintain, and enforce written policies and procedures to prevent the misuse of material, nonpublic information in violation of the Exchange Act.[655] Section 15E(g)(2) of the Exchange Act provides that the Commission shall adopt rules requiring an NRSRO to establish specific policies and procedures to prevent the misuse of material, non-public information.[656] Rule 17g–4 implements this statutory provision by requiring that an NRSRO's policies and procedures established pursuant to Section 15E(g)(1) of the Exchange Act[657] include three specific types of procedures.

As discussed above with respect to PRA, the Commission estimates that it will take approximately 50 hours for an NRSRO to establish procedures in conformance with the rule and that there will be 30 NRSROs. For these reasons, the Commission estimates that the average one-time cost to an NRSRO will be $10,250[658] and the total aggregate one-time cost to the industry will be $307,500.[659]

The Commission requested comment on these cost estimates. We also requested comment on whether there would be costs in addition to those identified above, such as costs arising from systems changes and restructuring business practices. Comment also was sought on whether these requirements would impose costs on other market participants, including persons who use credit ratings to make investment decisions or for regulatory purposes, and persons who purchase services and products from NRSROs. Commenters were asked to identify the metrics and sources of any empirical data that supported their costs estimates. The Commission did not receive any comments in response to these requests.

5. Rules 17g–5 and 17g–6

Rules 17g–5 and 17g–6 are conduct rules that require NRSROs respectively to avoid certain conflicts of interest and unfair, abusive or coercive acts and practices and, consequently, do not require an NRSRO to make records or reports or create recordkeeping or accounting systems. Moreover, 15E(1)(B)(vi) of the Exchange Act requires an NRSRO to disclose any conflicts of interest. Additionally, Section 15E(h) of the Exchange Act requires an NRSRO establish, maintain, and enforce written policies and procedures reasonable designed to address and manage any conflicts of interest that can arise from its business. Therefore, the Commission does not anticipate that Rule 17g–5 will result in any significant incremental costs.

Rules 17g–5 and 17g–6 prohibit respectively certain conflicts of interest and unfair, coercive and abusive acts and practices. The Commission believes that most entities that will become NRSROs do not engage in these types of conflicts, acts and practices. Therefore, the Commission estimates that these rules generally will impose *de minimis* costs. However, the Commission recognizes that an NRSRO may incur costs related to training employees about the requirements in these rules. It also is possible that the rules may require some NRSROs to restructure their business models or activities. The Commission, therefore, requested comment on such training and restructuring costs. The Commission also requested comment on whether there are any other costs associated with these rules. The Commission did not receive any comments on these specific issues.

VII. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Under Section 3(f) of the Exchange Act,[660] the Commission must, when engaging in rulemaking that requires the Commission to consider or determine if an action is necessary or appropriate in the public interest, consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act[661] requires the Commission to consider the anticompetitive effects of any rules the Commission adopts under the Exchange Act. Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission's view is that the rules will promote efficiency, competition, and capital formation. As discussed above with respect to the costs and benefits of the rules, the primary purpose of the Credit Rating Agency Reform Act of 2006 (the ''Rating Agency Act'')[662] is to foster ''competition in the credit rating agency business.''[663] The practice of identifying NRSROs through staff no-action letters has been criticized as a process that lacks transparency and creates a barrier for credit rating agencies seeking wider recognition and market share. The Commission believes that these rules implementing provisions of the Rating Agency Act further the Rating Agency Act's goal of increasing competition because they will provide credit rating agencies with a transparent process to apply for registration as an NRSRO that does not favor a particular business model or larger, established firms. This will make it easier for more credit rating agencies to apply for registration. Increased competition in the credit ratings business may lower the cost to issuers, obligors, and underwriters of obtaining credit ratings.

In addition, the Rating Agency Act requires NRSROs to make their credit ratings and information about themselves available to the public. Part of the definition of ''credit rating agency'' in the Rating Agency Act is that the entity must be in the business of

[653] $15,000 × 30 NRSROs = $450,000.

[654] 15 U.S.C. 78o–7(g)(1).

[655] 15 U.S.C. 78a *et seq.*

[656] 15 U.S.C. 78o–7(g)(2).

[657] 15 U.S.C. 78o–7(g)(1).

[658] The Commission estimates an NRSRO will have a senior compliance person perform these responsibilities. The SIA Management Report 2005 (Compliance Officer) indicates that the average hourly cost for a compliance manager is $205. Therefore, the average one-time cost to an NRSRO will be $10,250 [(50 hours) × ($205)].

[659] 30 NRSROs × $10,250 = $307,500.

[660] 15 U.S.C. 78c(f).

[661] 15 U.S.C. 78w(a)(2).

[662] Pub. L. 109–291 (2006).

[663] *See Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 3850,* Credit Rating Agency Reform Act of 2006, S. Report No. 109–326, 109th Cong., 2d Sess. (Sept. 6, 2006) (''Senate Report'').

issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee.[664] Under the Rating Agency Act and the rules adopted thereunder, an NRSRO will be required to disclose information about its credit ratings performance statistics, its methods for determining credit ratings, its organizational structure, its procedures to prevent the misuse of material non-public information, the conflicts of interest that arise from its business activities, its code of ethics, and the qualifications of its credit analysts and credit analyst supervisors. The Commission believes that these disclosures will allow users of the credit ratings to compare the ratings quality of different NRSROs. Although the information an NRSRO will provide on its Form NRSRO and to comply with the rules cannot substitute for an investor's due diligence in evaluating a credit rating, it will aid investors by providing a publicly accessible foundation of basic information about an NRSRO.

In addition, the rules implement provisions of the Rating Agency Act that are designed to improve the integrity of NRSROs. For example, the registration of a credit rating agency as an NRSRO will allow the Commission to conduct regular examinations of the credit rating agency to evaluate compliance with the regulatory scheme set forth in Section 15E of the Exchange Act and the rules thereunder and will subject an NRSRO to disclosure, recordkeeping, and annual audit requirements, as well as requirements regarding the prevention of misuse of material, nonpublic information, the management of conflicts of interest, and certain prohibited acts and practices. Increased confidence in the integrity of NRSROs and the credit ratings they issue may promote participation in the securities markets and facilitate capital formation. Better quality credit ratings could also reduce the likelihood of an unexpected collapse of a rated issuer or obligor, reducing risks to individual investors and to the financial markets. In addition to improving the quality of credit ratings, increased oversight of NRSROs may increase the accountability of an NRSRO to its subscribers, investors, and other persons who rely on the credibility and objectivity of credit ratings in making an investment decision.

The Commission sought comment on these matters. In particular, the Commission solicited comment on whether the rules would have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the Exchange Act. In addition, comment was sought on whether the rules would promote efficiency, competition, and capital formation. Commenters were requested to provide empirical data and other factual support for their views, if possible.

The Commission received several comments on how the rules will impact competition.[665] Many commenters weighing in on this issue stated that the rules will further the goals of the Rating Agency Act by fostering more competition.[666] Other commenters stated that the rules create undue burden and would be a barrier to entry for new or smaller credit rating agencies.[667] In response to this concern, the Commission notes that the rules have been modified in ways designed to decrease burden. Some of these modifications address specific issues raised by the commenters. For example, one commenter stated that the requirements to provide background information on each credit analyst and for non-resident NRSROs to provide a special undertaking should be eliminated.[668] As discussed above with respect to Form NRSRO and Rule 17g–2, these requirements have been eliminated. As discussed above in the sections on each rule, the Commission believes that the requirements in the rules that have been retained are necessary and narrowly tailored. The Commission believes these requirements represent a proper balance in promoting competition and the quality and integrity of credit ratings, and in fulfilling the Commission's statutory mandate to create a regulatory framework for NRSROs.

Finally, the Commission also notes that most of the commenters that weighed in on the prohibition in Rule 17g–6(a)(4) expressed an opinion as to how the provision, as proposed, would impact competition. For example, many of the commenters stated that the 85% threshold in the proposed rule was too high and, therefore, the prohibition would not achieve the desired goal of increasing competition insomuch as it would maintain the status quo in which the two largest credit rating agencies dominate the market for rating structured products.[669] On the other side of the issue, as discussed in the section describing Rule 17g–6, commenters argued that the Commission has insufficient data upon which to make a finding that a specific practice is unfair, abusive, or coercive and, consequently, the prohibition, as proposed, would interfere with natural market forces.[670]

The Commission notes that the rule has been modified to eliminate the 85% threshold. The rule now prohibits the practices where the practice is engaged in for an anticompetitive purpose. In this way, the rule is designed to prohibit conduct that inappropriately stifles competition and, at the same time, avoid the establishment of artificial constraints that could interfere with natural market forces. The Commission recognizes that the two largest credit rating agencies dominate the market for rating structured products. Consequently, the Commission intends—aided by the enhanced recordkeeping requirements around rating structured products—to monitor closely the practices NRSROs employ in this area.

VIII. Final Regulatory Flexibility Analysis

The Commission proposed Rules 17g–1, 17g–2, 17g–3, 17g–4, 17g–5, and 17g–6 and Form NRSRO in the proposing release under Section 15E of the Exchange Act.[671] An Initial Regulatory

[664] Section 3(a)(61) of the Exchange Act (15 U.S.C. 78c(a)(61)).

[665] *See, e.g.*, Gross Letter; AFP Letter; FSR Letter; ICI Letter; AEI Letter.

[666] *See, e.g.*, Gross Letter; AFP Letter; FSR Letter; ICI Letter.

[667] *See, e.g.*, AEI Letter.

[668] *Id.*

[669] *See, e.g.*, DBRS Letter; Fitch Letter; letter dated February 13, 2007 from Janet M. Tavakoli, President, Tavakoli Structured Finance, Inc.; letter dated February 14, 2007 from Gregory G. Raab, Chief Executive Officer, Axon; letter dated February 16, 2007 from Emile Van den Bol, Managing Director, Deutsche Bank; letter dated February 16, 2007 from Kent D. Born, Senior Managing Director, PPM America; letter dated February 23, 2007 from Patti Unti, Managing Director, Capmark Investments LP; letter dated February 23, 2007 from David Lazarus, Managing Director, Capmark Securities, Inc.; letter dated February 28, 2007 from Ronald E. Schrager, Chief Executive Officer, LNR Property Corporation; letter dated March 5, 2007 from David Hynes, Partner, Northcross Capital LLP; letter dated March 6, 2007 from S. Trezevant Moore, Jr., President & COO, Luminent Mortgage Capital, Inc.; letter dated March 7, 2007 from Bruce E. Stern, Chairman, Government Affairs Committee, Association of Financial Guaranty Insurers; letter dated March 8, 2007 from Majorie E. Gross; letter dated March 9, 2007 from Petra Spiegel, Eurohypo AG; letter dated March 9, 2007 from Landon D. Parsons, Managing Director, G–Bass; letter dated March 9, 2007 from Pat G. Halter, Chief Executive Officer, Principal Real Estate Investors; letter dated March 12, 2007 from Charles Covell, Executive Vice President, Citigroup Alternative Investments; letter dated March 12, 2007 from Rodney J. Dillman, General Counsel, Babson Capital Management LLC; letter dated March 12, 2007 from Louis C. Lucido, Group Managing Director, Trust Company of the West; letter dated March 12, 2007 from Daniel Ivascyn, Managing Director, PIMCO.

[670] *See, e.g.*, S&P Letter; Moody's Letter; R&I Letter; FSR Letter; Rutherfurd Letter; Langohr Letter; AST Letter.

[671] 15 U.S.C. 78o–7.

Flexibility Analysis (''IRFA'') was published in the proposing release. The Commission has prepared the following Final Regulatory Flexibility Analysis (FRFA), in accordance with the provisions of the Regulatory Flexibility Act,[672] regarding Rules 17g–1, 17g–2, 17g–3, 17g–4, 17g–5, and 17g–6 and Form NRSRO under Section 15E of the Exchange Act.[673]

A. Need for and Objective of the Rules

The rules implement specific provisions of the Credit Rating Agency Reform Act of 2006 (the ''Rating Agency Act'').[674] The Rating Agency Act defines the term ''nationally recognized statistical rating organization'' as a credit rating agency registered with the Commission, provides authority for the Commission to implement registration, recordkeeping, financial reporting, and oversight rules with respect to registered credit rating agencies, and directs the Commission to issue final implementing rules no later than 270 days after its enactment.

The objectives of the Rating Agency Act are ''to improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating industry.'' [675] The rules are designed to further these objectives and to: Assist the Commission in determining whether an entity should be registered as an NRSRO; assist the Commission in reviewing whether an NRSRO complies with the provisions of the Rating Agency Act and rules thereunder; adhere to the Commission's statutory mandate to adopt rules to implement the NRSRO regulatory program; and provide information regarding NRSROs to the public and to users of credit ratings.

B. Significant Issues Raised by Commenters

The Commission sought comment with respect to every aspect of the IRFA, including comments with respect to the number of small entities that may be affected by the proposed rules. Commenters were asked to specify the costs of compliance with the proposed rules and suggest alternatives that would accomplish the goals of the rules. The Commission did not receive any specific comments on the IRFA. The Commission did, however, receive a limited number of comments that discussed the effect the rules might have on smaller credit rating agencies, although these commenters did not address whether their comments pertained to entities that would be small businesses for purposes of Regulatory Flexibility Act analysis. For example, one commenter stated that the rules, as proposed, created an undue burden and would be a barrier to entry for new or smaller credit rating agencies.[676] Several commenters stated that the prohibition in Rule 17g–5 from having a conflict with respect to a client that has provided 10% or more of the NRSRO's annual revenues could prevent smaller credit rating agencies from registering as NRSROs.[677]

C. Legal Basis

The Commission is adopting the rules pursuant to the Exchange Act [678] and, particularly, Section 15E of the Exchange Act.[679]

D. Small Entities Subject to the Rule

Paragraph (a) of Rule 0–10 provides that for purposes of the Regulatory Flexibility Act, a small entity ''[w]hen used with reference to an 'issuer' or a 'person' other than an investment company'' means ''an 'issuer' or 'person' that, on the last day of its most recent fiscal year, had total assets of $5 million or less.'' [680] The Commission believes that an NRSRO with total assets of $5 million or less would qualify as a ''small'' entity for purposes of the Regulatory Flexibility Act.

As noted above, the Commission believes that approximately 30 credit rating agencies will be registered as NRSROs. Moreover, as also noted above, the Senate Report accompanying the Rating Agency Act states that the two largest credit rating agencies have about 80% of the market share as measured by revenues. The Senate Report also states that these two firms rate more than 99% of the debt obligations and preferred stock issues publicly traded in the United States. Given these figures, the Commission believes that the majority of the credit rating agencies registered with the Commission will be ''small'' entities.[681] Consequently, the Commission estimates that, of the approximately 30 credit rating agencies estimated to be registered with the Commission, approximately 20 would be ''small'' entities for purposes of the Regulatory Flexibility Act.[682]

E. Reporting, Recordkeeping, and Other Compliance Requirements

A credit rating agency seeking to apply to the Commission for registration as an NRSRO will apply using Form NRSRO.[683] The Form elicits certain information and requires the credit rating agency to attach a number of documents as Exhibits (some of which would have to be made publicly available) and certifications from qualified institutional buyers. The public Exhibits consist of information about credit ratings performance data, the credit rating agency's organizational structure, the methods used by the credit rating agency for issuing credit ratings, the policies used by the credit rating agency to manage activities that could potentially risk the impartiality of its credit ratings, and the credit rating agency's credit analysts. To the extent permitted by law, the confidential Exhibits consist of information about the credit rating agency's financial condition, revenues, and credit analyst compensation.

After registration, the credit rating agency (now an NRSRO) generally will be required to promptly update the public information on its Form NRSRO whenever an Item or Exhibit becomes materially inaccurate. To update information, the NRSRO must furnish the Commission with an amendment using Form NRSRO. In addition, the NRSRO must furnish the Commission with an annual certification on Form NRSRO.[684] In the annual certification, the NRSRO must represent that all information on the Form, as amended, continues to be accurate, list any material changes made during the previous year, and include an update to the public Exhibit relating to the performance statistics of its credit ratings. After its application for registration is approved, the NRSRO must make Form NRSRO and the public Exhibits submitted to the Commission, and all amendments, readily accessible to the public.

NRSROs also are subject to a recordkeeping rule.[685] This rule requires an NRSRO to make and retain certain records relating to the business of issuing credit ratings. These records will assist the Commission, through its examination process, in monitoring whether the NRSRO continues to maintain adequate financial and

[672] 5 U.S.C. 603.

[673] 15 U.S.C. 78o–7.

[674] Pub. L. 109–291 (2006).

[675] *See Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 3850,* Credit Rating Agency Reform Act of 2006, S. Report No. 109–326, 109th Cong., 2d Sess. (Sept. 6, 2006) (''Senate Report'').

[676] *See* AEI Letter.

[677] *See, e.g.,* Fitch Letter; AEI Letter; AST Letter; ASF Letter.

[678] 15 U.S.C. 78a *et seq.*

[679] 15 U.S.C. 78o–7.

[680] 17 CFR 240.0–10(a).

[681] *See* 17 CFR 240.0–10(a).

[682] *Id.*

[683] Rule 17g–1.

[684] *Id.*

[685] Rule 17g–2.

managerial resources to consistently produce credit ratings with integrity (as required under the Rating Agency Act) and whether the NRSRO is complying with the provisions of the Rating Agency Act, the rules adopted thereunder, and the NRSRO's disclosed policies and procedures.

On an annual fiscal year basis, an NRSRO must furnish the Commission with audited financial statements.[686] This requirement is designed to assist the Commission in monitoring whether the NRSRO continues to maintain adequate financial resources to consistently produce credit ratings with integrity. It also is designed to assist the Commission in monitoring whether the NRSRO is complying with provisions of the Rating Agency Act and the rules adopted thereunder regarding potential conflicts of interest arising from dealings with large customers in terms of revenues earned.

Finally, all NRSROs will be subject to requirements designed to protect their impartiality with respect to issuing credit ratings. First, they must establish, maintain, and enforce specific written policies designed to prevent the misuse of material non-public information.[687] Second, an NRSRO is prohibited from having certain general conflicts unless it, as required under the Rating Agency Act, disclosed the conflict and adopted procedures to manage the conflict.[688] Further certain conflicts of interest—for example, rating a security owned by the NRSRO—are prohibited.[689] Third, NRSROs are prohibited from engaging in certain practices that the Commission has found to be unfair, coercive, or abusive practices.[690]

F. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no federal rules that duplicate, overlap, or conflict with the rules.

G. Significant Alternatives

Pursuant to section 3(a) of the RFA,[691] the Commission must consider certain types of alternatives, including: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part of the rule, for small entities.

The Commission does not believe it is appropriate to establish different compliance or reporting requirements or timetables; clarify, consolidate, or simplify compliance and reporting requirements under the rules for small entities; or exempt small entities from coverage of the rules, or any part of the rules. The Rating Agency Act and the rules establish a voluntary program of registration and supervision that allows all NRSROs the flexibility to develop procedures tailored to their specific organizational structures and business models. Further, many of the rules, as adopted, are due to a direct statutory mandate. The Commission also does not believe that it is necessary to consider whether small entities should be permitted to use performance rather than design standards to comply with the rules as the rules already propose performance standards and do not dictate for entities of any size any particular design standards that must be employed to achieve the objectives of the rules.

As for the comment that the rules will be a barrier to entry for small entities, the Commission notes that the commenter did not specify how the rules would disproportionately burden small entities, nor did it provide cost estimates for small entities.[692] The Commission believes the burden associated with the rules will impact all NRSROs in a proportionate manner based on their size and complexity. Therefore, the Commission does not believe it would be appropriate to prescribe lesser requirements for small entities, nor have any commenters suggested lesser requirements.

Further, the Commission notes that the rules, as adopted, have been modified in ways designed to decrease burden. Some of these modifications address specific issues raised by the commenter.[693] For example, the commenter stated that the requirements to provide background information on each credit analyst and for non-resident NRSROs to provide a special undertaking should be eliminated.[694] These requirements have been eliminated. As discussed above in the sections on each rule, the Commission believes that the requirements in the rules that have been retained are necessary and narrowly tailored.

As for the comment that the prohibition on having a conflict with respect to a client that has provided 10% or more of the NRSRO's revenues, the Commission notes that the commenters did not provide any supporting data. In addition, no commenter specifically identifying itself as a small entity raised this prohibition as an issue.[695] The Commission believes that it would be highly unusual for a small credit rating agency to derive 10% or more of its revenues from a single client and, if this was the case, that it would very difficult for the credit rating agency to issue an impartial rating requested by the client. The Commission notes that the smaller credit rating agencies tend to use a subscriber fee-based business model. Thus, they are not paid to determine specific credit ratings and, consequently, would not be impacted by this prohibition.

IX. Statutory Authority

The Commission is adopting Form NRSRO and Rules 17g–1, 17g–2, 17g–3, 17g–4, 17g–5 and 17g–6 under the Exchange Act pursuant to the authority conferred by the Exchange Act, including Sections 3(b), 15E, 17, 23(a) and 36.[696]

Text of Rules

List of Subjects

17 CFR Parts 240 and 249b

Brokers, Reporting and recordkeeping requirements, Securities.

■ In accordance with the foregoing, the Commission hereby amends Title 17, Chapter II of the Code of Federal Regulation as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority 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–l, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

[686] Rule 17g–3.

[687] Rule 17g–4.

[688] Rule 17g–5.

[689] *Id.*

[690] Rule 17g–6.

[691] 5 U.S.C. 603(c).

[692] *See* AEI letter.

[693] *Id.*

[694] *Id.*

[695] The Commission intends to monitor how the prohibition operates in practice, particularly with respect to structured products. If the prohibition interferes with how NRSROs as a matter of course deal with structured product sponsors, the Commission will evaluate whether the rule should be modified to accommodate this business practice or whether an exemption would be appropriate.

[696] 15 U.S.C. 78c(b), 78o–7, 78q, 78w, and 78mm.

■ 2. An undesignated center heading and §§ 240.17g–1 through 240.17g–6 are added to read as follows:

Nationally Recognized Statistical Rating Organizations

Sec.
240.17g–1 Application for registration as a nationally recognized statistical rating organization.
240.17g–2 Records to be made and retained by nationally recognized statistical rating organizations.
240.17g–3 Annual financial reports to be furnished by nationally recognized statistical rating organizations.
240.17g–4 Prevention of misuse of material nonpublic information.
240.17g–5 Conflicts of interest.
240.17g–6 Prohibited acts and practices.

Nationally Recognized Statistical Rating Organizations

§ 240.17g–1 Application for registration as a nationally recognized statistical rating organization.

(a) *Initial application.* A credit rating agency applying to the Commission to be registered under section 15E of the Act (15 U.S.C. 78o–7) as a nationally recognized statistical rating organization must furnish the Commission with an initial application on Form NRSRO (§ 249b.300 of this chapter) that follows all applicable instructions for the Form.

(b) *Application to register for an additional class of credit ratings.* A nationally recognized statistical rating organization applying to register for an additional class of the credit ratings described in section 3(a)(62)(B) of the Act (15 U.S.C. 78c(a)(62)(B)) must furnish the Commission with an application to add a class of credit ratings on Form NRSRO that follows all applicable instructions for the Form. The application will be subject to the requirements of section 15E(a)(2) of the Act (15 U.S.C. 78o–7(a)(2)).

(c) *Supplementing an application prior to final action by the Commission.* An applicant must promptly furnish the Commission with a written notice if information submitted to the Commission in an initial application to be registered as a nationally recognized statistical rating organization or in an application to register for an additional class of credit ratings is found to be or becomes materially inaccurate prior to the date of a Commission order granting or denying the application. The notice must identify the information that was found to be materially inaccurate. The applicant also must promptly furnish the Commission with an application supplement on Form NRSRO that follows all applicable instructions for the Form.

(d) *Withdrawing an application.* An applicant may withdraw an initial application to be registered as a nationally recognized statistical rating organization or an application to register for an additional class of credit ratings prior to the date of a Commission order granting or denying the application. To withdraw the application, the applicant must furnish the Commission with a written notice of withdrawal executed by a duly authorized person.

(e) *Update of registration.* A nationally recognized statistical rating organization amending materially inaccurate information in its application for registration pursuant to section 15E(b)(1) of the Act (15 U.S.C. 78o–7(b)(1)) must promptly furnish the Commission with the update of its registration on Form NRSRO that follows all applicable instructions for the Form.

(f) *Annual certification.* A nationally recognized statistical rating organization amending its application for registration pursuant to section 15E(b)(2) of the Act (15 U.S.C. 78o–7(b)(2)) must furnish the Commission with the annual certification on Form NRSRO that follows all applicable instructions for the Form not later than 90 days after the end of each calendar year.

(g) *Withdrawal from registration.* A nationally recognized statistical rating organization withdrawing from registration pursuant to section 15E(e)(1) of the Act (15 U.S.C. 78o–7(e)(1)) must furnish the Commission with a notice of withdrawal from registration on Form NRSRO that follows all applicable instructions for the Form. The withdrawal from registration will become effective 45 calendar days after the notice is furnished to the Commission upon such terms and conditions as the Commission may establish as necessary in the public interest or for the protection of investors.

(h) *Furnishing Form NRSRO.* A Form NRSRO submitted under any paragraph of this section will be considered furnished to the Commission on the date the Commission receives a complete and properly executed Form NRSRO that follows all applicable instructions for the Form. Information submitted on a confidential basis and for which confidential treatment has been requested pursuant to applicable Commission rules will be accorded confidential treatment to the extent permitted by law.

(i) *Public availability of Form NRSRO.* A nationally recognized statistical rating organization must make its current Form NRSRO and information and documents submitted in Exhibits 1 through 9 to Form NRSRO publicly available on its Web site, or through another comparable, readily accessible means within 10 business days after the date of the Commission order granting an initial application for registration as a nationally recognized statistical rating organization or an application to register for an additional class of credit ratings and within 10 business days after furnishing a Form NRSRO to the Commission under paragraphs (e), (f), or (g) of this section.

§ 240.17g–2 Records to be made and retained by nationally recognized statistical rating organizations.

(a) *Records required to be made and retained.* A nationally recognized statistical rating organization must make and retain the following books and records, which must be complete and current:

(1) Records of original entry into the accounting system of the nationally recognized statistical rating organization and records reflecting entries to and balances in all general ledger accounts of the nationally recognized statistical rating organization for each fiscal year.

(2) Records with respect to each current credit rating of the nationally recognized statistical rating organization indicating (as applicable):

(i) The identity of any credit analyst(s) that participated in determining the credit rating;

(ii) The identity of the person(s) that approved the credit rating before it was issued;

(iii) Whether the credit rating was solicited or unsolicited; and

(iv) The date the credit rating action was taken.

(3) An account record for each person (for example, an obligor, issuer, underwriter, or other user) that has paid the nationally recognized statistical rating organization for the issuance or maintenance of a credit rating indicating:

(i) The identity and address of the person; and

(ii) The credit rating(s) determined or maintained for the person.

(4) An account record for each subscriber to the credit ratings and/or credit analysis reports of the nationally recognized statistical rating organization indicating the identity and address of the subscriber.

(5) A record listing the general types of services and products offered by the nationally recognized statistical rating organization.

(6) A record documenting the established procedures and methodologies used by the nationally recognized statistical rating organization to determine credit ratings.

(7) A record that lists each security and money market instrument and its corresponding credit rating issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction where the nationally recognized statistical rating organization, in determining the credit rating for the security or money market instrument, treats assets within such pool or as a part of such transaction that are not subject to a credit rating of the nationally recognized statistical rating organization by any or a combination of the following methods:

(i) Determining credit ratings for the unrated assets;

(ii) Performing credit assessments or determining private credit ratings for the unrated assets;

(iii) Determining credit ratings or private credit ratings, or performing credit assessments for the unrated assets by taking into consideration the internal credit analysis of another person; or

(iv) Determining credit ratings or private credit ratings, or performing credit assessments for the unrated assets by taking into consideration (but not necessarily adopting) the credit ratings of another nationally recognized statistical rating organization.

(b) *Records required to be retained.* A nationally recognized statistical rating organization must retain the following books and records (excluding drafts of documents) that relate to its business as a credit rating agency:

(1) Significant records (for example, bank statements, invoices, and trial balances) underlying the information included in the annual financial reports furnished by the nationally recognized statistical rating organization to the Commission pursuant to § 240.17g–3.

(2) Internal records, including nonpublic information and work papers, used to form the basis of a credit rating issued by the nationally recognized statistical rating organization.

(3) Credit analysis reports, credit assessment reports, and private credit rating reports of the nationally recognized statistical rating organization and internal records, including nonpublic information and work papers, used to form the basis for the opinions expressed in these reports.

(4) Compliance reports and compliance exception reports.

(5) Internal audit plans, internal audit reports, documents relating to internal audit follow-up measures, and all records identified by the internal auditors of the nationally recognized statistical rating organization as necessary to perform the audit of an activity that relates to its business as a credit rating agency.

(6) Marketing materials of the nationally recognized statistical rating organization that are published or otherwise made available to persons that are not associated with the nationally recognized statistical rating organization.

(7) External and internal communications, including electronic communications, received and sent by the nationally recognized statistical rating organization and its employees that relate to initiating, determining, maintaining, changing, or withdrawing a credit rating.

(8) Internal documents that contain information, analysis, or statistics that were used to develop a procedure or methodology to treat the credit ratings of another nationally recognized statistical rating organization for the purpose of determining a credit rating for a security or money market instrument issued by an asset pool or part of any asset-backed or mortgage-backed securities transaction.

(9) For each security or money market instrument identified in the record required to be made and retained under paragraph (a)(7) of this section, any document that contains a description of how assets within such pool or as a part of such transaction not rated by the nationally recognized statistical rating organization but rated by another nationally recognized statistical rating organization were treated for the purpose of determining the credit rating of the security or money market instrument.

(10) Form NRSROs (including Exhibits and accompanying information and documents) submitted to the Commission by the nationally recognized statistical rating organization.

(c) *Record retention periods.* The records required to be retained pursuant to paragraphs (a) and (b) of this section must be retained for three years after the date the record is made or received.

(d) *Manner of retention.* An original, or a true and complete copy of the original, of each record required to be retained pursuant to paragraphs (a) and (b) of this section must be maintained in a manner that, for the applicable retention period specified in paragraph (c) of this section, makes the original record or copy easily accessible to the principal office of the nationally recognized statistical rating organization and to any other office that conducted activities causing the record to be made or received.

(e) *Third-party record custodian.* The records required to be retained pursuant to paragraphs (a) and (b) of this section may be made or retained by a third-party record custodian, provided the nationally recognized statistical rating organization furnishes the Commission at its principal office in Washington, DC with a written undertaking of the custodian executed by a duly authorized person. The undertaking must be in substantially the following form:

> The undersigned acknowledges that books and records it has made or is retaining for [the nationally recognized statistical rating organization] are the exclusive property of [the nationally recognized statistical rating organization]. The undersigned undertakes that upon the request of [the nationally recognized statistical rating organization] it will promptly provide the books and records to [the nationally recognized statistical rating organization] or the U.S. Securities and Exchange Commission (''Commission'') or its representatives and that upon the request of the Commission it will promptly permit examination by the Commission or its representatives of the records at any time or from time to time during business hours and promptly furnish to the Commission or its representatives a true and complete copy of any or all or any part of such books and records.

A nationally recognized statistical rating organization that engages a third-party record custodian remains responsible for complying with every provision of this section.

(f) A nationally recognized statistical rating organization must promptly furnish the Commission or its representatives with legible, complete, and current copies, and, if specifically requested, English translations of those records of the nationally recognized statistical rating organization required to be retained pursuant to paragraphs (a) and (b) this section, or any other records of the nationally recognized statistical rating organization subject to examination under section 17(b) of the Act (15 U.S.C. 78q(b)) that are requested by the Commission or its representatives.

§ 240.17g–3 Annual financial reports to be furnished by nationally recognized statistical rating organizations.

(a) A nationally recognized statistical rating organization must annually, not more than 90 calendar days after the end of its fiscal year (as indicated on its current Form NRSRO), furnish the Commission, at the Commission's principal office in Washington, DC, with the following financial reports as of the end of its most recent fiscal year:

(1) Audited financial statements of the nationally recognized statistical rating organization or audited consolidated financial statements of its parent if the nationally recognized statistical rating organization is a separately identifiable

division or department of the parent. The audited financial statements must:

(i) Include a balance sheet, an income statement and statement of cash flows, and a statement of changes in ownership equity;

(ii) Be prepared in accordance with generally accepted accounting principles in the jurisdiction in which the nationally recognized statistical rating organization or its parent is incorporated, organized, or has its principal office; and

(iii) Be certified by an accountant who is qualified and independent in accordance with paragraphs (a), (b), and (c)(1), (2), (3), (4), (5) and (8) of § 210.2–01 of this chapter. The accountant must give an opinion on the financial statements in accordance with paragraphs (a) through (d) of § 210.2–02 of this chapter.

(2) If applicable, unaudited consolidating financial statements of the parent of the nationally recognized statistical rating organization that include the nationally recognized statistical rating organization.

Note to paragraph (a)(2): This financial report must be furnished only if the audited financial statements provided pursuant to paragraph (a)(1) of this section are consolidated financial statements of the parent of the nationally recognized statistical rating organization.

(3) An unaudited financial report providing information concerning the revenue of the nationally recognized statistical rating organization in each of the following categories (as applicable) for the fiscal year:

(i) Revenue from determining and maintaining credit ratings;

(ii) Revenue from subscribers;

(iii) Revenue from granting licenses or rights to publish credit ratings; and

(iv) Revenue from all other services and products (include descriptions of any major sources of revenue).

(4) An unaudited financial report providing the total aggregate and median annual compensation of the credit analysts of the nationally recognized statistical rating organization for the fiscal year.

Note to paragraph (a)(4): In calculating total and median annual compensation, the nationally recognized statistical rating organization may exclude deferred compensation, provided such exclusion is noted in the report.

(5) An unaudited financial report listing the 20 largest issuers and subscribers that used credit rating services provided by the nationally recognized statistical rating organization by amount of net revenue attributable to the issuer or subscriber during the fiscal year. Additionally, include on the list any obligor or underwriter that used the credit rating services provided by the nationally recognized statistical rating organization if the net revenue attributable to the obligor or underwriter during the fiscal year equaled or exceeded the net revenue attributable to the 20th largest issuer or subscriber. Include the net revenue amount for each person on the list.

Note to paragraph (a)(5): A person is deemed to have ''used the credit rating services'' of the nationally recognized statistical rating organization if the person is any of the following: an obligor that is rated by the nationally recognized statistical rating organization (regardless of whether the obligor paid for the credit rating); an issuer that has securities or money market instruments subject to a credit rating of the nationally recognized statistical rating organization (regardless of whether the issuer paid for the credit rating); any other person that has paid the nationally recognized statistical rating organization to determine a credit rating with respect to a specific obligor, security, or money market instrument; or a subscriber to the credit ratings, credit ratings data, or credit analysis of the nationally recognized statistical rating organization. In calculating net revenue attributable to a person, the nationally recognized statistical rating organization should include all revenue earned by the nationally recognized statistical rating organization for any type of service or product, regardless of whether related to credit rating services, and net of any rebates and allowances paid or owed to the person by the nationally recognized statistical rating organization.

(b) The nationally recognized statistical rating organization must attach to each financial report furnished pursuant to paragraph (a) of this section a signed statement by a duly authorized person associated with the nationally recognized statistical rating organization that the person has responsibility for the report and, to the best knowledge of the person, the financial report fairly presents, in all material respects, the financial condition, results of operations, cash flows, revenues, and analyst compensation, as applicable, of the nationally recognized statistical rating organization for the period presented.

(c) The Commission may grant an extension of time or an exemption with respect to any requirements in this section either unconditionally or on specified terms and conditions on the written request of a nationally recognized statistical rating organization if the Commission finds that such extension or exemption is necessary or appropriate in the public interest and consistent with the protection of investors.

§ 240.17g–4 Prevention of misuse of material nonpublic information.

(a) The written policies and procedures a nationally recognized statistical rating organization establishes, maintains, and enforces to prevent the misuse of material, nonpublic information pursuant to section 15E(g)(1) of the Act (15 U.S.C. 78o–7(g)(1)) must include policies and procedures reasonably designed to prevent:

(1) The inappropriate dissemination within and outside the nationally recognized statistical rating organization of material nonpublic information obtained in connection with the performance of credit rating services;

(2) A person within the nationally recognized statistical rating organization from purchasing, selling, or otherwise benefiting from any transaction in securities or money market instruments when the person is aware of material nonpublic information obtained in connection with the performance of credit rating services that affects the securities or money market instruments; and

(3) The inappropriate dissemination within and outside the nationally recognized statistical rating organization of a pending credit rating action before issuing the credit rating on the Internet or through another readily accessible means.

(b) For the purposes of this section, the term *person within a nationally recognized statistical rating organization* means a nationally recognized statistical rating organization, its credit rating affiliates identified on Form NRSRO, and any partner, officer, director, branch manager, and employee of the nationally recognized statistical rating organization or its credit rating affiliates (or any person occupying a similar status or performing similar functions).

§ 240.17g–5 Conflicts of interest.

(a) A person within a nationally recognized statistical rating organization is prohibited from having a conflict of interest relating to the issuance or maintenance of a credit rating identified in paragraph (b) of this section, unless:

(1) The nationally recognized statistical rating organization has disclosed the type of conflict of interest in Exhibit 6 to Form NRSRO in accordance with section 15E(a)(1)(B)(vi) of the Act (15 U.S.C. 78o–7(a)(1)(B)(vi)) and § 240.17g–1; and

(2) The nationally recognized statistical rating organization has established and is maintaining and enforcing written policies and procedures to address and manage

conflicts of interest in accordance with section 15E(h) of the Act (15 U.S.C. 78o–7(h)).

(b) *Conflicts of interest.* For purposes of this section, each of the following is a conflict of interest:

(1) Being paid by issuers or underwriters to determine credit ratings with respect to securities or money market instruments they issue or underwrite.

(2) Being paid by obligors to determine credit ratings with respect to the obligors.

(3) Being paid for services in addition to determining credit ratings by issuers, underwriters, or obligors that have paid the nationally recognized statistical rating organization to determine a credit rating.

(4) Being paid by persons for subscriptions to receive or access the credit ratings of the nationally recognized statistical rating organization and/or for other services offered by the nationally recognized statistical rating organization where such persons may use the credit ratings of the nationally recognized statistical rating organization to comply with, and obtain benefits or relief under, statutes and regulations using the term *nationally recognized statistical rating organization.*

(5) Being paid by persons for subscriptions to receive or access the credit ratings of the nationally recognized statistical rating organization and/or for other services offered by the nationally recognized statistical rating organization where such persons also may own investments or have entered into transactions that could be favorably or adversely impacted by a credit rating issued by the nationally recognized statistical rating organization.

(6) Allowing persons within the nationally recognized statistical rating organization to directly own securities or money market instruments of, or having other direct ownership interests in, issuers or obligors subject to a credit rating determined by the nationally recognized statistical rating organization.

(7) Allowing persons within the nationally recognized statistical rating organization to have a business relationship that is more than an arms length ordinary course of business relationship with issuers or obligors subject to a credit rating determined by the nationally recognized statistical rating organization.

(8) Having a person associated with the nationally recognized statistical rating organization that is a broker or dealer engaged in the business of underwriting securities or money market instruments.

(9) Any other type of conflict of interest relating to the issuance of credit ratings by the nationally recognized statistical rating organization that is material to the nationally recognized statistical rating organization and that is identified by the nationally recognized statistical rating organization in Exhibit 6 to Form NRSRO in accordance with section 15E(a)(1)(B)(vi) of the Act (15 U.S.C. 78o–7(a)(1)(B)(vi)) and § 240.17g–1.

(c) *Prohibited conflicts.* A nationally recognized statistical rating organization is prohibited from having the following conflicts of interest relating to the issuance or maintenance of a credit rating as a credit rating agency:

(1) The nationally recognized statistical rating organization issues or maintains a credit rating solicited by a person that, in the most recently ended fiscal year, provided the nationally recognized statistical rating organization with net revenue (as reported under § 240.17g–3) equaling or exceeding 10% of the total net revenue of the nationally recognized statistical rating organization for the fiscal year;

(2) The nationally recognized statistical rating organization issues or maintains a credit rating with respect to a person (excluding a sovereign nation or an agency of a sovereign nation) where the nationally recognized statistical rating organization, a credit analyst that participated in determining the credit rating, or a person responsible for approving the credit rating, directly owns securities of, or has any other direct ownership interest in, the person that is subject to the credit rating;

(3) The nationally recognized statistical rating organization issues or maintains a credit rating with respect to a person associated with the nationally recognized statistical rating organization; or

(4) The nationally recognized statistical rating organization issues or maintains a credit rating where a credit analyst who participated in determining the credit rating, or a person responsible for approving the credit rating, is an officer or director of the person that is subject to the credit rating.

(d) For the purposes of this section, the term *person within a nationally recognized statistical rating organization* means a nationally recognized statistical rating organization, its credit rating affiliates identified on Form NRSRO, and any partner, officer, director, branch manager, and employee of the nationally recognized statistical rating organization or its credit rating affiliates (or any person occupying a similar status or performing similar functions).

§ 240.17g–6 Prohibited acts and practices.

(a) *Prohibitions.* A nationally recognized statistical rating organization is prohibited from engaging in any of the following unfair, coercive, or abusive practices:

(1) Conditioning or threatening to condition the issuance of a credit rating on the purchase by an obligor or issuer, or an affiliate of the obligor or issuer, of any other services or products, including pre-credit rating assessment products, of the nationally recognized statistical rating organization or any person associated with the nationally recognized statistical rating organization.

(2) Issuing, or offering or threatening to issue, a credit rating that is not determined in accordance with the nationally recognized statistical rating organization's established procedures and methodologies for determining credit ratings, based on whether the rated person, or an affiliate of the rated person, purchases or will purchase the credit rating or any other service or product of the nationally recognized statistical rating organization or any person associated with the nationally recognized statistical rating organization.

(3) Modifying, or offering or threatening to modify, a credit rating in a manner that is contrary to the nationally recognized statistical rating organization's established procedures and methodologies for modifying credit ratings based on whether the rated person, or an affiliate of the rated person, purchases or will purchase the credit rating or any other service or product of the nationally recognized statistical rating organization or any person associated with the nationally recognized statistical rating organization.

(4) Issuing or threatening to issue a lower credit rating, lowering or threatening to lower an existing credit rating, refusing to issue a credit rating, or withdrawing or threatening to withdraw a credit rating, with respect to securities or money market instruments issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction, unless all or a portion of the assets within such pool or part of such transaction also are rated by the nationally recognized statistical rating organization, where such practice is engaged in by the nationally recognized statistical rating organization for an anticompetitive purpose.

PART 249b—FURTHER FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The authority citation for part 249b continues to read in part as follows.

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted.

* * * * *

■ 4. Section 249b.300 and Form NRSRO are added to read as follows:

§ 249b.300 FORM NRSRO, application for registration as a nationally recognized statistical rating organization pursuant to section 15E of the Securities Exchange Act of 1934 and § 240.17g–1 of this chapter.

This Form shall be used for an initial application for and an application to add a class of credit ratings to, a supplement to an initial application for and an application to add a class of credit ratings to, an update and amendment to an application for, and a withdrawal from a registration as a nationally recognized statistical rating organization pursuant to section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7) and § 240.17g–1 of this chapter.

Note: The text of Form NRSRO will not appear in the Code of Federal Regulations.

Form NRSRO—Application for Registration as a Nationally Recognized Statistical Rating Organization (NRSRO)

OMB Approval

OMB Number: 3235–0625.

Expires: May 31, 2010.

Estimated average burden hours per response: 300.

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

SEC 1541 (2–07)

BILLING CODE 8010–01–P

APPLICATION FOR REGISTRATION AS A NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION (NRSRO)

☐ INITIAL APPLICATION

☐ APPLICATION TO ADD CLASS OF CREDIT RATINGS

☐ APPLICATION SUPPLEMENT
Items and/or Exhibits Supplemented:
_____

☐ ANNUAL CERTIFICATION

☐ UPDATE OF REGISTRATION
Items and/or Exhibits Amended:
_____

☐ WITHDRAWAL FROM REGISTRATION

Important: Refer to Form NRSRO Instructions for General Instructions, Item-by-Item Instructions, an Explanation of Terms, and the Disclosure Reporting Page (NRSRO). "You" and "your" mean the person furnishing this Form NRSRO to the Commission. "Applicant" and "NRSRO" mean the person furnishing this Form NRSRO to the Commission and any credit rating affiliate identified in Item 3.

1. **A.** Your full name:
_____

B. **(i)** Name under which your credit rating business is primarily conducted, if different from Item 1A:
_____

(ii) Any other name under which your credit rating business is conducted and where it is used (other than the name of a credit rating affiliate identified in Item 3):
_____

C. Address of your principal office (do not use a P.O. Box):
_____
(Number and Street) (City) (State/Country) (Zip/Postal Code)

D. Mailing address, if different:
_____
(Number and Street) (City) (State/Country) (Zip/Postal Code)

E. Contact person (See Instructions):
_____
(Name and Title)
_____
(Number and Street) (City) (State/Country) (Zip/Postal Code)

CERTIFICATION:

The undersigned has executed this Form NRSRO on behalf of, and on the authority of, the Applicant/NRSRO. The undersigned, on behalf of the Applicant/NRSRO, represents that the information and statements contained in this Form, including Exhibits and attachments, all of which are part of this Form, are accurate in all significant respects. If this is an ANNUAL CERTIFICATION, the undersigned, on behalf of the NRSRO, represents that the NRSRO's application on Form NRSRO, as amended, is accurate in all significant respects.

_____ _____
(Date) (Name of the Applicant/NRSRO)

By: _____
(Signature) (Print Name and Title)

2. A. Your legal status:

☐ Corporation ☐ Limited Liability Company ☐ Partnership ☐ Other (specify) _____

B. Month and day of your fiscal year end: _____

C. Place and date of your formation (i.e., state or country where you were incorporated, where your partnership agreement was filed, or where you otherwise were formed):

State/Country of formation: _____ Date of formation: _____

3. Your credit rating affiliates (See Instructions):

_____
(Name) (Address)

_____
(Name) (Address)

_____
(Name) (Address)

_____
(Name) (Address)

_____
(Name) (Address)

4. The designated compliance officer of the Applicant/NRSRO (See Instructions):

_____
(Name and Title)

_____
(Number and Street) (City) (State/Country) (Postal Code)

5. Describe in detail how this Form NRSRO and Exhibits 1 through 9 to this Form NRSRO will be made publicly available on Web site of the Applicant/NRSRO, or through another comparable, readily accessible means (See Instructions):

_____

_____

6. COMPLETE ITEM 6 ONLY IF THIS IS AN INITIAL APPLICATION, APPLICATION SUPPLEMENT, OR APPLICATION TO ADD A CLASS OF CREDIT RATINGS.

A. Indicate below the classes of credit ratings for which the Applicant/NRSRO is applying to be registered. For each class, indicate the approximate number of credit ratings the Applicant/NRSRO presently has outstanding in that class as of the date of this application and the approximate date the Applicant/NRSRO began issuing credit ratings as a "credit rating agency" in that class on a continuous basis through the present (See Instructions):

Class of credit ratings	Applying for registration	Approximate number currently outstanding	Approximate date issuance commenced
financial institutions as that term is defined in section 3(a)(46) of the Exchange Act (15 U.S.C. 78c(a)(46)), brokers as that term is defined in section 3(a)(4) of the Exchange Act (15 U.S.C. 78c(a)(4)), and dealers as that term is defined in section 3(a)(5) of the Exchange Act (15 U.S.C. 78c(a)(5))	☐		
insurance companies as that term is defined in section 3(a)(19) of the Exchange Act (15 U.S.C. 78c(a)(19))	☐		
corporate issuers	☐		

issuers of asset-backed securities as that term is defined in 17 CFR 229.1101(c)	☐		
issuers of government securities as that term is defined in section 3(a)(42) of the Exchange Act (15 U.S.C. 78c(a)(42)), municipal securities as that term is defined in section 3(a)(29) of the Exchange Act (15 U.S.C. 78c(a)(29)), and foreign government securities	☐		

B. Briefly describe how the Applicant/NRSRO makes the credit ratings in the classes indicated in Item 6A readily accessible for free or for a reasonable fee (See Instructions):

_____

_____

C. Check the applicable box and attach certifications from qualified institutional buyers, if required (See Instructions):

☐ The Applicant/NRSRO is attaching _____ certifications from qualified institutional buyers to this application. Each is marked "Certification from Qualified Institutional Buyer."

☐ The Applicant/NRSRO is exempt from the requirement to submit certifications from qualified institutional buyers pursuant to section 15E(a)(1)(D) of the Exchange Act.

Note: You are not required to make a Certification from a Qualified Institutional Buyer submitted with this Form NRSRO publicly available on your Web site, or through another comparable, readily accessible means pursuant to Exchange Act Rule 17g-1(i). You may request that the Commission keep these certifications confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment. The Commission will keep the certifications confidential upon request to the extent permitted by law.

7. DO NOT COMPLETE ITEM 7 IF THIS IS AN INITIAL APPLICATION.

A. Indicate below the classes of credit ratings for which the NRSRO is currently registered. For each class, indicate the approximate number of credit ratings the NRSRO had outstanding in that class as of the most recent calendar year end and the approximate date the NRSRO began issuing credit ratings as a "credit rating agency" in that class on a continuous basis through the present (See Instructions):

Class of credit rating	Currently registered	Approximate number outstanding as of the most recent calendar year end	Approximate date issuance commenced
financial institutions as that term is defined in section 3(a)(46) of the Exchange Act (15 U.S.C. 78c(a)(46)), brokers as that term is defined in section 3(a)(4) of the Exchange Act (15 U.S.C. 78c(a)(4)), and dealers as that term is defined in section 3(a)(5) of the Exchange Act (15 U.S.C. 78c(a)(5))	☐		
insurance companies as that term is defined in section 3(a)(19) of the Exchange Act (15 U.S.C. 78c(a)(19))	☐		
corporate issuers	☐		
issuers of asset-backed securities as that term is defined in 17 CFR 229.1101(c)	☐		

issuers of government securities as that term is defined in section 3(a)(42) of the Act (15 U.S.C. 78c(a)(42)), municipal securities as that term is defined in section 3(a)(29) of the Exchange Act (15 U.S.C. 78c(a)(29)), and foreign government securities	☐		

B. Briefly describe how the NRSRO makes the credit ratings in the classes indicated in Item 7A readily accessible for free or for a reasonable fee (See Instructions):

_____

_____

	YES	NO
8. Answer each question. Provide information that relates to a "Yes" answer on a Disclosure Reporting Page (NRSRO) and submit the Disclosure Reporting Page with this form (See Instructions). You are not required to make any disclosure reporting pages submitted with this Form NRSRO publicly available on your Web site, or through another comparable, readily accessible means pursuant to Exchange Act Rule 17g-1(i). You may request that the Commission keep any disclosure reporting pages confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment. The Commission will keep the disclosure reporting pages confidential upon request to the extent permitted by law.		
A. Has the Applicant/NRSRO or any person within the Applicant/NRSRO committed or omitted any act, or been subject to an order or finding, enumerated in subparagraphs (A), (D), (E), (G), or (H) of section 15(b)(4) of the Securities Exchange Act of 1934, been convicted of any offense specified in section 15(b)(4)(B) of the Securities Exchange Act of 1934, or been enjoined from any action, conduct, or practice specified in section 15(b)(4)(C) of the Securities Exchange Act of 1934 in the ten years preceding the date of the initial application of the Applicant/NRSRO for registration as an NRSRO or at any time thereafter?	☐	☐
B. Has the Applicant/NRSRO or any person within the Applicant/NRSRO been convicted of any crime that is punishable by imprisonment for 1 or more years, and that is not described in section 15(b)(4) of the Securities Exchange Act of 1934, or been convicted of a substantially equivalent crime by a foreign court of competent jurisdiction in the ten years preceding the date of the initial application of the Applicant/NRSRO for registration as an NRSRO or at any time thereafter?	☐	☐
C. Is any person within the Applicant/NRSRO subject to any order of the Commission barring or suspending the right of the person to be associated with an NRSRO?	☐	☐

9. Exhibits (See Instructions).

Exhibit 1. Credit ratings performance measurement statistics. ☐ Exhibit 1 is attached and made a part of this Form NRSRO.
Exhibit 2. A description of the procedures and methodologies used in determining credit ratings. ☐ Exhibit 2 is attached and made a part of Form NRSRO.
Exhibit 3. Policies or procedures adopted and implemented to prevent the misuse of material, nonpublic information. ☐ Exhibit 3 is attached and made a part of this Form NRSRO.

Exhibit 4. Organizational structure.

☐ Exhibit 4 is attached to and made a part of this Form NRSRO.

Exhibit 5. The code of ethics or a statement of the reasons why a code of ethics is not in effect.

☐ Exhibit 5 is attached to and made a part of this Form NRSRO.

Exhibit 6. Identification of conflicts of interests relating to the issuance of credit ratings.

☐ Exhibit 6 is attached to and made a part of this Form NRSRO.

Exhibit 7. Policies and procedures to address and manage conflicts of interest.

☐ Exhibit 7 is attached to and made a part of this Form NRSRO.

Exhibit 8. Certain information regarding the credit rating agency's credit analysts and credit analyst supervisors.

☐ Exhibit 8 is attached to and made a part of this Form NRSRO.

Exhibit 9. Certain information regarding the credit rating agency's designated compliance officer.

☐ Exhibit 9 is attached to and made a part of this Form NRSRO.

Exhibit 10. A list of the largest users of credit rating services by the amount of net revenue earned from the user during the fiscal year ending immediately before the date of the initial application.

☐ Exhibit 10 is attached to and made a part of this Form NRSRO.

Note: You are not required to make this Exhibit publicly available on your Web site, or through another comparable, readily accessible means pursuant to Exchange Act Rule 17g-1(i). You may request that the Commission keep this Exhibit confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment. The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law.

Exhibit 11. Audited financial statements for each of the three fiscal or calendar years ending immediately before the date of the initial application.

☐ Exhibit 11 is attached to and made a part of this Form NRSRO.

Note: You are not required to make this Exhibit publicly available on your Web site, or through another comparable, readily accessible means pursuant to Exchange Act Rule 17g-1(i). You may request that the Commission keep this Exhibit confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment. The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law.

Exhibit 12. Information regarding revenues for the fiscal or calendar year ending immediately before the date of the initial application.

☐ Exhibit 12 is attached to and made a part of this Form NRSRO.

Note: You are not required to make this Exhibit publicly available on your Web site, or through another comparable, readily accessible means pursuant to Exchange Act Rule 17g-1(i). You may request that the Commission keep this Exhibit confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment. The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law.

Exhibit 13. The total and median annual compensation of credit analysts.

☐ Exhibit 13 is attached and made a part of this Form NRSRO.

Note: You are not required to make this Exhibit publicly available on your Web site, or through another comparable, readily accessible means pursuant to Exchange Act Rule 17g-1(i). You may request that the Commission keep this Exhibit confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment. The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law.

BILLING CODE 8010–01–C

Form NRSRO Instructions

A. General Instructions

1. Form NRSRO is the Application for Registration as a Nationally Recognized Statistical Rating Organization (''NRSRO'') under Section 15E of the Securities Exchange Act of 1934 (''Exchange Act'') and Exchange Act Rule 17g–1. Exchange Act Rule 17g–1 requires an Applicant/NRSRO to use Form NRSRO to furnish the U.S. Securities and Exchange Commission (''Commission'') with:

- An initial application to be registered as an NRSRO;
- An application to register for an additional class of credit ratings;
- An application supplement;
- An update of registration pursuant to Section 15E(b)(1) of the Exchange Act;
- An annual certification pursuant to Section 15E(b)(2) of the Exchange Act; and
- A withdrawal of registration pursuant to Section 15E(e) of the Exchange Act.

2. Exchange Act Rule 17g–1(c) requires that an Applicant/NRSRO promptly provide the Commission with a written notice if information submitted to the Commission in an initial application for registration or in an application to register for an additional class of credit ratings is found to be or becomes materially inaccurate before the Commission has granted or denied the application. The notice must identify the information found to be materially inaccurate. The Applicant/NRSRO must also promptly furnish the Commission with accurate and complete information as an application supplement on Form NRSRO.

3. Pursuant to Exchange Act Rule 17g–1(i), an NRSRO must make its current Form NRSRO and information and documents furnished in Exhibits 1 through 9 to Form NRSRO publicly available on its Web site, or through another comparable, readily accessible means within 10 business days after the date of the Commission Order granting an initial application for registration as an NRSRO or an application to register for an additional class of credit ratings and within 10 business days after submitting an update of registration, annual certification, or withdrawal from registration to the Commission on Form NRSRO. The certifications from qualified institutional buyers, disclosure reporting pages, and Exhibits 10 through 13 are not required to be made publicly available by the NRSRO pursuant to Rule 17g–1(i). An Applicant/NRSRO may request that the Commission keep confidential the certifications from qualified institutional buyers, the disclosure reporting pages, and the information and documents in Exhibits 10–13 submitted to the Commission. An Applicant/NRSRO seeking confidential treatment for these submissions should mark each page ''Confidential Treatment'' and comply with Commission rules governing confidential treatment (*See* 17 CFR 200.80 and 17 CFR 200.83). The Commission will keep this information confidential to the extent permitted by law.

4. Section 15E(a)(2) of the Exchange Act prescribes time periods and requirements for the Commission to grant or deny an initial application for registration as an NRSRO. These time periods also apply to an application to register for an additional class of credit ratings.

5. Type or clearly print all information. Use only the current version of Form NRSRO or a reproduction of it.

6. Section 15E of the Exchange Act (15 U.S.C. 78o–7) authorizes the Commission to collect the Information on Form NRSRO from an Applicant/NRSRO. The principal purposes of Form NRSRO are to determine whether an Applicant should be granted registration as an NRSRO, whether an NRSRO should be granted registration in an additional class of credit ratings, whether an NRSRO continues to meet the criteria for registration as an NRSRO, to withdraw a registration, and to provide information about an NRSRO to users of credit ratings. Intentional misstatements or omissions may constitute federal criminal violations under 18 U.S.C. 1001.

The information collection is in accordance with the clearance requirements of Section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The Commission may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. The time required to complete and furnish this form will vary depending on individual

circumstances. The estimated average time to complete an initial application is displayed on the facing page of this Form. Send comments regarding this burden estimate or suggestions for reducing the burden to Director, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

7. Under Exchange Act Rule 17g–2(b)(10), an NRSRO must retain copies of all Form NRSROs (including Exhibits, accompanying information, and documents) submitted to the Commission. Exchange Act Rule 17g–2(c) requires that these records be retained for three years after the date the record is made.

8. ADDRESS—The mailing address for Form NRSRO is: U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

9. A Form NRSRO will be considered furnished to the Commission on the date the Commission receives a complete and properly executed Form NRSRO that follows all applicable instructions for the Form.

B. Instructions for an Initial Application

An Applicant applying to be registered with the Commission as an NRSRO must furnish the Commission with an initial application on Form NRSRO. To complete an initial application:

- Check the ''INITIAL APPLICATION'' box at the top of Form NRSRO.
- Complete Items 1, 2, 3, 4, 5, 6, and 8. (See Instructions below for each Item). Enter ''None'' or ''N/A'' where appropriate.
- Unless exempt from the requirement, attach certifications from qualified institutional buyers, marked ''Certification from Qualified Institutional Buyer'' (See Instructions below for Item 6C).
- Attach Exhibits 1 through 13 (See Instructions below for each Exhibit).
- Execute the Form.

The Applicant must promptly furnish the Commission with a written notice if information submitted to the Commission in an initial application is found to be or becomes materially inaccurate prior to the date of a Commission order granting or denying the application. The notice must identify the information found to be materially inaccurate. The Applicant also must promptly furnish the Commission with an application supplement on Form NRSRO (See instructions below for an application supplement).

C. Instructions for an Application to Add a Class of Credit Ratings

An NRSRO applying to register for an additional class of credit ratings must furnish the Commission with an application on Form NRSRO. To complete an application to register for an additional class of credit ratings:

- Check the ''APPLICATION TO ADD CLASS OF CREDIT RATINGS'' box at the top of Form NRSRO.
- Complete Items 1, 2, 3, 4, 5, 6, 7, and 8 on the Form following all applicable instructions for each Item (See Instructions below for each Item). If any information in an Item on the previously furnished Form NRSRO is materially inaccurate, update that information. Enter ''None'' or ''N/A'' where appropriate. Complete each Item even if the Item is not being updated.
- Unless exempt from the requirement, attach certifications from qualified institutional buyers for the additional class of credit ratings marked ''Certification from Qualified Institutional Buyer'' (See Instructions below for Item 6C).
- If any information in an Exhibit previously furnished is materially inaccurate, update that information.
- Execute the Form.

The Applicant must promptly furnish the Commission with a written notice if information submitted to the Commission in an application to add a class of credit ratings is found to be or becomes materially inaccurate prior to the date of a Commission order granting or denying the application. The notice must identify the information found to be materially inaccurate. The Applicant also must promptly furnish the Commission with an application supplement on Form NRSRO (See instructions below for an application supplement).

D. Instructions for an Application Supplement

An Applicant must furnish an application supplement to the Commission on Form NRSRO if information submitted to the Commission in a pending initial application for registration as an NRSRO or a pending application to register for an additional class of credit ratings is found to be or becomes materially inaccurate. To complete an application supplement:

- Check the ''APPLICATION SUPPLEMENT'' box at the top of Form NRSRO.
- Indicate on the line provided under the box the Item(s) or Exhibit(s) being supplemented.
- Complete Items 1, 2, 3, 4, 5 and 8 on the Form following all applicable instructions for each Item (See Instructions below for each Item). If supplementing an initial application, also complete Item 6. If supplementing an application for registration in an additional class of credit ratings, also complete Items 6 and 7. If any information in an Item on the previously furnished Form NRSRO is materially inaccurate, update that information. Enter ''None'' or ''N/A'' where appropriate. Complete each Item even if the Item is not being updated.
- If a certification from a qualified institutional buyer is being updated or a new certification is being added, attach the updated or new certification.
- If an Exhibit is being updated, attach the updated Exhibit.
- Execute the Form.

E. Instructions for an Update of Registration

After registration is granted, Section 15E(b)(1) of the Exchange Act requires that an NRSRO must *promptly* amend its application for registration if information or documents provided in the previously furnished Form NRSRO become *materially inaccurate*. This requirement does not apply to Item 7 and Exhibit 1, which only are required to be updated annually with the annual certification. It also does not apply to Exhibits 10–13 and the certifications from qualified institutional buyers, which are not required to be updated on Form NRSRO after registration. An NRSRO amending its application for registration must furnish the Commission with an update of its registration on Form NRSRO. To complete an update of registration:

- Check the ''UPDATE OF REGISTRATION'' box at the top of Form NRSRO.
- Indicate on the line provided under the box the Item(s) or Exhibit(s) being updated.
- Complete Items 1, 2, 3, 4, 5, 7, and 8 on the Form following all applicable instructions for each Item (See Instructions below for each Item). If any information in an Item on the previously furnished Form NRSRO is materially inaccurate, update that information. Enter ''None'' or ''N/A'' where appropriate. Complete each Item even if the Item is not being updated.
- If an Exhibit is being updated, attach the updated Exhibit.
- Execute the Form.

F. Instructions for Annual Certifications

After registration is granted, Section 15E(b)(2) of the Exchange Act requires that an NRSRO furnish the Commission with an annual certification not later than 90 days after the end of each

calendar year. The annual certification must be furnished to the Commission on Form NRSRO and must include an update of the information in Item 7 and the credit ratings performance measurement statistics furnished in Exhibit 1, a certification that the information and documents furnished on or with Form NRSRO continue to be accurate (use the certification on the Form), and a list of material changes to the application for registration that occurred during the previous calendar year. To complete an annual certification:

- Check the ''ANNUAL CERTIFICATION'' box at the top of Form NRSRO.
- Complete Items 1, 2, 3, 4, 5, 7, and 8 on the Form following all applicable instructions for each Item (See Instructions below for each Item). If any information in an Item on the previously furnished Form NRSRO is materially inaccurate, update that information. Enter ''None'' or ''N/A'' where appropriate. Complete each Item even if the Item is not being updated.
- If any information in an Exhibit previously furnished is materially inaccurate, update that information.
- Attach a list of all material changes made to the information or documents in the application for registration of the NRSRO that occurred during the previous calendar year.
- Execute the Form.

G. Instructions for a Withdrawal From Registration

Section 15E(e)(1) of the Exchange Act provides that an NRSRO may voluntarily withdraw its registration with the Commission. To withdraw from registration, an NRSRO must furnish the Commission with a notice of withdrawal from registration on Form NRSRO. The withdrawal from registration will become effective 45 calendar days after the withdrawal from registration is furnished to the Commission upon such terms and conditions as the Commission may establish as necessary in the public interest or for the protection of investors. To complete a withdrawal from registration:

- Check the ''WITHDRAWAL FROM REGISTRATION'' box at the top of Form NRSRO.
- Complete Items 1, 2, 3, 4, 5, 7, and 8 on the Form following all applicable instructions for each Item (See Instructions below for each Item). If any information on the previously furnished Form NRSRO is materially inaccurate, update that information. Enter ''None'' or ''N/A'' where appropriate. Complete each Item even if the Item is not being updated.
- Execute the Form.

H. Instructions for Specific Line Items

Item 1A. Provide the name of the person (*e.g.*, XYZ Corporation) that is furnishing the Form NRSRO to the Commission. This means the name of the person that is applying for registration as an NRSRO or is registered as an NRSRO and not the name of the individual that is executing the Form.

Item 1E. The individual listed as the contact person must be authorized to receive all communications and papers from the Commission and must be responsible for their dissemination within the Applicant/NRSRO.

Certification. The certification must be executed by the Chief Executive Officer or the President of the person that is furnishing the Form NRSRO to the Commission or an individual with similar responsibilities.

Item 3. Identify credit rating affiliates that issue credit ratings on behalf of the person furnishing the Form NRSRO to the Commission in one or more of the classes of credit ratings identified in Item 6 or Item 7. A ''credit rating affiliate'' is a separate legal entity or a separately identifiable department or division thereof that determines credit ratings that are credit ratings of the person furnishing the Form NRSRO to the Commission. The information in Items 4–8 and all the Exhibits must incorporate information about the credit ratings, methodologies, procedures, policies, financial condition, results of operations, personnel, and organizational structure of each credit rating affiliate identified in Item 3, as applicable. Any credit rating determined by a credit rating affiliate identified in Item 3 will be treated as a credit rating issued by the person furnishing the Form NRSRO to the Commission for purposes of Section 15E of the Exchange Act and the Commission's rules thereunder. The terms ''Applicant'' and ''NRSRO'' as used on Form NRSRO and the Instructions for the Form mean the person furnishing the Form NRSRO to the Commission and any credit rating affiliate identified in Item 3.

Item 4. Section 15E(j) of the Exchange Act requires an NRSRO to designate a compliance officer responsible for administering the policies and procedures of the NRSRO established pursuant to Sections 15E(g) and (h) of the Exchange Act (respectively, to prevent the misuse of material nonpublic information and address and manage conflicts of interest) and for ensuring compliance with applicable securities laws, rules, and regulations.

Item 5. Section 15E(a)(3) of the Exchange Act and Exchange Act Rule 17g–1(i) require an NRSRO to make Form NRSRO and Exhibits 1–9 to Form NRSRO furnished to the Commission publicly available on the NRSRO's Web site, or through another comparable, readily accessible means within 10 business days after the date of the Commission order granting an initial application for registration as an NRSRO or an application to register for an additional class of credit ratings and within 10 business days after furnishing the Commission with an amendment, annual certification, or withdrawal of registration on Form NRSRO. The certifications from qualified institutional investors, Disclosure Reporting Pages, and Exhibits 10 through 13 are not required to be made publicly available on the NRSRO's Web site, or through another comparable, readily accessible means. Describe how the current Form NRSRO and Exhibits 1–9 will be made publicly available. If they will be posted on a Web site, for example, give the Internet address and link to the Form and Exhibits.

Item 6. Complete Item 6 only if furnishing an initial application for registration, an application to be registered in an additional class of credit ratings, or an application supplement.

Item 6A. Pursuant to Section 15E(a)(1)(B)(vii) of the Exchange Act, an Applicant applying for registration as an NRSRO must disclose in the application the classes of credit ratings for which the Applicant/NRSRO is applying to be registered. Indicate these classes by checking the appropriate box or boxes. For each class of credit ratings, provide in the appropriate box the approximate number of credit ratings the Applicant/NRSRO presently has outstanding as of the date of the application. Pursuant to the definition of ''nationally recognized statistical rating organization'' in Section 3(a)(62) of the Exchange Act, an Applicant/NRSRO must have been in business as a ''credit rating agency'' for at least the 3 consecutive years immediately preceding the date of its application for registration as an NRSRO. For each class of credit ratings, also provide in the appropriate box the approximate date the Applicant/NRSRO began issuing and making readily accessible credit ratings in the class on a continuous basis through the present as a ''credit rating agency,'' as that term is defined in Section 3(a)(61) of the Exchange Act. If there was a period when the Applicant/NRSRO stopped issuing credit ratings in a particular

class or stopped operating as a credit rating agency, provide the approximate date the Applicant/NRSRO resumed issuing and making readily accessible credit ratings in that class as a credit rating agency. Refer to the definition of ''credit rating agency'' in the instructions below (also at 15 U.S.C. 78c(a)(61)) to determine when the Applicant/NRSRO began operating as a ''credit rating agency.''

Item 6B. To meet the definition of ''credit rating agency'' pursuant to Section 3(a)(61)(A) of the Exchange Act, the Applicant must, among other things, issue ''credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee.'' Briefly describe how the Applicant/NRSRO makes the credit ratings in the classes indicated in Item 6A readily accessible for free or for a reasonable fee. If a person must pay a fee to obtain a credit rating made readily accessible by the Applicant/NRSRO, provide a fee schedule or describe the price(s) charged.

Item 6C. If the Applicant/NRSRO is required to furnish qualified institutional buyer certifications, under Section 15E(a)(1)(C) of the Exchange Act, submit a minimum of 10 certifications from qualified institutional buyers, none of which is affiliated with the Applicant/NRSRO. Each certification may address more than one class of credit ratings. To be registered as an NRSRO for a class of credit ratings identified in Item 6A under ''Applying for Registration,'' the Applicant/NRSRO must submit at least two certifications that address the class of credit ratings. If this is an application of an NRSRO to be registered in one or more additional classes of credit ratings, furnish at least two certifications that address each additional class of credit ratings. The required certifications must be signed by a person duly authorized by the certifying entity, must be notarized, must be marked ''Certification from Qualified Institutional Buyer,'' and must be in substantially the following form:

''I, [Executing official], am authorized by [Certifying entity] to execute this certification on behalf of [Certifying entity]. I certify that all actions by stockholders, directors, general partners, and other bodies necessary to authorize me to execute this certification have been taken and that [Certifying entity]:

(i) Meets the definition of a 'qualified institutional buyer' as set forth in section 3(a)(64) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(64)) pursuant to the following subsection(s) of 17 CFR 230.144A(a)(1) [insert applicable citations];

(ii) Has seriously considered the credit ratings of [the Applicant/NRSRO] in the course of making some of its investment decisions for at least the three years immediately preceding the date of this certification, in the following classes of credit ratings: [Insert applicable classes of credit ratings]; and

(iii) Has not received compensation either directly or indirectly from [the Applicant/NRSRO] for executing this certification.

[*Signature*]

Print Name and Title

You are not required to make a Certification from a Qualified Institutional Buyer submitted with this Form NRSRO publicly available on your Web site, or through another comparable, readily accessible means pursuant to Exchange Act Rule 17g–1(i). You may request that the Commission keep these certifications confidential by marking each page ''Confidential Treatment'' and complying with Commission rules governing confidential treatment (*See* 17 CFR 200.80 and 17 CFR 200.83). The Commission will keep the certifications confidential upon request to the extent permitted by law.

Item 7. An Applicant furnishing Form NRSRO to apply for registration as an NRSRO should not complete Item 7. An NRSRO furnishing Form NRSRO for any other reason must complete Item 7. The information in Item 7 must be updated on an annual basis with the furnishing of the annual certification.

Item 7A. Indicate the classes of credit ratings for which the NRSRO is currently registered by checking the appropriate box or boxes. For each class of credit ratings, provide in the appropriate box the approximate number of credit ratings the NRSRO had outstanding as of the end of the most recently ended calendar year. For each class of credit ratings, also provide in the appropriate box the approximate date the NRSRO began issuing and making readily accessible credit ratings in the class on a continuous basis through the present as a ''credit rating agency,'' as that term is defined in Section 3(a)(61) of the Exchange Act. If there was a period when the NRSRO stopped issuing credit ratings in a particular class or stopped operating as a credit rating agency, provide the approximate date the NRSRO resumed issuing and making readily accessible credit ratings in that class as a credit rating agency. Refer to the definition of ''credit rating agency'' in the instructions below (also at 15 U.S.C. 78c(a)(61)) to determine when the NRSRO began operating as a ''credit rating agency.''

Item 7B. Briefly describe how the NRSRO makes the credit ratings in the classes indicated in Item 7A readily accessible for free or for a reasonable fee. If a person must pay a fee to obtain a credit rating made readily accessible by the NRSRO, provide a fee schedule or describe the price(s) charged.

Item 8. Answer each question by checking the appropriate box. Refer to the definition of ''person within an Applicant/NRSRO'' set forth below to determine the persons to which the questions apply. Information that relates to an affirmative answer must be provided on a Disclosure Reporting Page (NRSRO) and furnished with Form NRSRO. Submit a separate Disclosure Reporting Page (NRSRO) for each person that: (a) has committed or omitted any act, or has been subject to an order or finding, enumerated in subparagraphs (A), (D), (E), (G), or (H) of section 15(b)(4) of the Securities Exchange Act of 1934, has been convicted of any offense specified in section 15(b)(4)(B) of the Securities Exchange Act of 1934, or has been enjoined from any action, conduct, or practice specified in section 15(b)(4)(C) of the Securities Exchange Act of 1934; (b) has been convicted of any crime that is punishable by imprisonment for 1 or more years, and that is not described in section 15(b)(4) of the Securities Exchange Act of 1934, or has been convicted of a substantially equivalent crime by a foreign court of competent jurisdiction; or (c) is subject to any order of the Commission barring or suspending the right of the person to be associated with an NRSRO. The Disclosure Reporting Page (NRSRO) is attached to these instructions. Note: the definition of ''person within an Applicant/NRSRO'' is narrower than the definition of ''person associated with a nationally recognized statistical rating organization'' in Section 3(a)(63) of the Exchange Act.

You are not required to make any disclosure reporting pages submitted with this Form NRSRO publicly available on your Web site, or through another comparable, readily accessible means pursuant to Exchange Act Rule 17g–1(i). You may request that the Commission keep any disclosure reporting pages confidential by marking each page ''Confidential Treatment'' and complying with Commission rules governing confidential treatment. The Commission will keep the disclosure reporting pages confidential upon request to the extent permitted by law.

Item 9. Exhibits. Section 15E(a)(1)(B) of the Exchange Act requires a credit rating agency's application for registration as an NRSRO to contain certain specific information and documents and, pursuant to Section 15E(a)(1)(B)(x), any other information and documents concerning the applicant and any person associated

with the applicant that the Commission requires as necessary or appropriate in the public interest or for the protection of investors. If any information or document required to be included with any Exhibit is maintained in a language other than English, provide a copy of the original document and a version of the document translated into English. Attach a certification by an authorized person that the translated version is a true, accurate, and complete English translation of the information or document. Attach the Exhibits to Form NRSRO in numerical order. Bind each Exhibit separately, and mark each Exhibit or bound volume of the Exhibit with the appropriate Exhibit number. The information provided in the Exhibits must be sufficiently detailed to allow for verification. The information and documents provided in Exhibits 1 through 9 must be made publicly available on the NRSRO's Web site, or through another comparable, readily accessible means pursuant to Exchange Act Rule 17g–1(i). The information and documents required to be provided in Exhibits 10 through 13 are not required to be made publicly available on the NRSRO's Web site, or through another comparable, readily accessible means pursuant to Exchange Act Rule 17g–1(i). An NRSRO may request that the Commission keep these Exhibits confidential by marking each page of them ''Confidential Treatment'' and complying with Commission rules governing confidential treatment (*See* 17 CFR 200.80 and 17 CFR 200.83). The Commission will keep the information and documents in these Exhibits confidential upon request to the extent permitted by law.

Exhibit 1. Provide in this Exhibit performance measurement statistics of the credit ratings of the Applicant/NRSRO over short-term, mid-term, and long-term periods (as applicable) through the most recent calendar year-end, including, as applicable: historical down-grade and default rates within each of the credit rating categories, notches, grades, or rankings used by the Applicant/NRSRO as an indicator of the assessment of the creditworthiness of an obligor, security, or money market instrument. As part of this Exhibit, define the credit rating categories, notches, grades, and rankings used by the Applicant/NRSRO and explain the performance measurement statistics, including the inputs, time horizons, and metrics used to determine the statistics.

Exhibit 2. Provide in this Exhibit a general description of the procedures and methodologies used by the Applicant/NRSRO to determine credit ratings, including unsolicited credit ratings within the classes of credit ratings for which the Applicant/NRSRO is seeking registration or is registered. The description must be sufficiently detailed to provide users of credit ratings with an understanding of the processes employed by the Applicant/NRSRO in determining credit ratings, including, as applicable, descriptions of: policies for determining whether to initiate a credit rating; a description of the public and non-public sources of information used in determining credit ratings, including information and analysis provided by third-party vendors; the quantitative and qualitative models and metrics used to determine credit ratings; the methodologies by which credit ratings of other credit rating agencies are treated to determine credit ratings for securities or money market instruments issued by an asset pool or as part of any asset-backed or mortgaged-backed securities transaction; the procedures for interacting with the management of a rated obligor or issuer of rated securities or money market instruments; the structure and voting process of committees that review or approve credit ratings; procedures for informing rated obligors or issuers of rated securities or money market instruments about credit rating decisions and for appeals of final or pending credit rating decisions; procedures for monitoring, reviewing, and updating credit ratings; and procedures to withdraw, or suspend the maintenance of, a credit rating. An Applicant/NRSRO may provide in Exhibit 2 the location on its Web site where additional information about the procedures and methodologies is located.

Exhibit 3. Provide in this Exhibit a copy of the written policies and procedures established, maintained, and enforced by the Applicant/NRSRO to prevent the misuse of material, nonpublic information pursuant to Section 15E(g) of the Exchange Act and 17 CFR 240.17g–4. Do not include any information that is proprietary or that would diminish the effectiveness of a specific policy or procedure if made publicly available.

Exhibit 4. Provide in this Exhibit information about the organizational structure of the Applicant/NRSRO, including, as applicable, an organizational chart that identifies, as applicable, the ultimate and sub-holding companies, subsidiaries, and material affiliates of the Applicant/NRSRO; an organizational chart showing the divisions, departments, and business units of the Applicant/NRSRO; and an organizational chart showing the managerial structure of the Applicant/NRSRO, including the designated compliance officer identified in Item 4.

Exhibit 5. Provide in this Exhibit a copy of the written code of ethics the Applicant/NRSRO has in effect or a statement of the reasons why the Applicant/NRSRO does not have a written code of ethics in effect.

Exhibit 6. Identify in this Exhibit the types of conflicts of interest relating to the issuance of credit ratings by the Applicant/NRSRO that are material to the Applicant/NRSRO. First, identify the conflicts described in the list below that apply to the Applicant/NRSRO. The Applicant/NRSRO may use the descriptions below to identify an applicable conflict of interest and is not required to provide any further details. Second, briefly describe any other type of conflict of interest relating to the issuance of credit ratings by the Applicant/NRSRO that is not covered in the descriptions below that is material to the Applicant/NRSRO (for example, one the Applicant/NRSRO has established specific policies and procedures to address):

- The Applicant/NRSRO is paid by issuers or underwriters to determine credit ratings with respect to securities or money market instruments they issue or underwrite.
- The Applicant/NRSRO is paid by obligors to determine credit ratings of the obligors.
- The Applicant/NRSRO is paid for services in addition to determining credit ratings by issuers, underwriters, or obligors that have paid the Applicant/NRSRO to determine a credit rating.
- The Applicant/NRSRO is paid by persons for subscriptions to receive or access the credit ratings of the Applicant/NRSRO and/or for other services offered by the Applicant/NRSRO where such persons may use the credit ratings of the Applicant/NRSRO to comply with, and obtain benefits or relief under, statutes and regulations using the term ''nationally recognized statistical rating organization.''
- The Applicant/NRSRO is paid by persons for subscriptions to receive or access the credit ratings of the Applicant/NRSRO and/or for other services offered by the Applicant/NRSRO where such persons also may own investments or have entered into transactions that could be favorably or adversely impacted by a credit rating issued by the Applicant/NRSRO.
- The Applicant/NRSRO allows persons within the Applicant/NRSRO to:
  - Directly own securities or money market instruments of, or have other direct ownership interests in, obligors or

issuers subject to a credit rating determined by the Applicant/NRSRO.

○ Have business relationships that are more than arms length ordinary course business relationships with obligors or issuers subject to a credit rating determined by the Applicant/NRSRO.

• A person associated with the Applicant/NRSRO is a broker or dealer engaged in the business of underwriting securities or money market instruments (identify the person).

• The Applicant/NRSRO has any other material conflict of interest that arises from the issuances of credit ratings (briefly describe).

Exhibit 7. Provide in this Exhibit a copy of the written policies and procedures established, maintained, and enforced by the Applicant/NRSRO to address and manage conflicts of interest pursuant to Section 15E(h) of the Exchange Act. Do not include any information that is proprietary or that would diminish the effectiveness of a specific policy or procedure if made publicly available.

Exhibit 8. Provide in this Exhibit the following information about the Applicant/NRSRO's credit analysts (See definition below) and the persons who supervise the credit analysts:

• The total number of credit analysts.

• The total number of credit analyst supervisors.

• A general description of the minimum qualifications required of the credit analysts, including education level and work experience (if applicable, distinguish between junior, mid, and senior level credit analysts).

• A general description of the minimum qualifications required of the credit analyst supervisors, including education level and work experience.

Exhibit 9. Provide in this Exhibit the following information about the designated compliance officer (identified in Item 4) of the Applicant/NRSRO:

• Name.

• Employment history.

• Post secondary education.

• Whether employed by the Applicant/NRSRO full-time or part-time.

Exhibit 10. Provide in this Exhibit a list of the largest users of credit rating services of the Applicant by the amount of net revenue earned by the Applicant attributable to the person during the fiscal year ending immediately before the date of the initial application. First, determine and list the 20 largest *issuers* and *subscribers* in terms of net revenue. Next, add to the list any *obligor* or *underwriter* that, in terms of net revenue during the fiscal year, equaled or exceeded the 20th largest issuer or subscriber. In making the list, rank the persons in terms of net revenue from largest to smallest and include the net revenue amount for each person. For purposes of this Exhibit:

Net revenue means revenue earned by the Applicant for any type of service or product provided to the person, regardless of whether related to credit rating services, and net of any rebates and allowances the Applicant paid or owes to the person; and

Credit rating services means any of the following: rating an obligor (regardless of whether the obligor or any other person paid for the credit rating); rating an issuer's securities or money market instruments (regardless of whether the issuer, underwriter, or any other person paid for the credit rating); and providing credit ratings, credit ratings data, or credit ratings analysis to a subscriber.

An NRSRO is not required to make this Exhibit publicly available on its Web site, or through another comparable, readily accessible means pursuant to Exchange Act Rule 17g–1(i). An NRSRO may request that the Commission keep this Exhibit confidential by marking each page ''Confidential Treatment'' and complying with Commission rules governing confidential treatment (*See* 17 CFR 200.80 and 17 CFR 200.83). The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law.

Exhibit 11. Provide in this Exhibit the financial statements of the Applicant, which must include a balance sheet, an income statement and statement of cash flows, and a statement of changes in ownership equity, audited by an independent public accountant, for each of the three fiscal or calendar years ending immediately before the date of the Applicant's initial application to the Commission, subject to the following:

If the Applicant is a division, unit, or subsidiary of a parent company, the Applicant may provide audited consolidated financial statements of its parent company.

If the Applicant does not have audited financial statements for one or more of the three fiscal or calendar years ending immediately before the date of the initial application, the Applicant can provide unaudited financial statements for the applicable year or years, but must provide audited financial statements for the fiscal or calendar year ending immediately before the date of the initial application. Attach to the unaudited financial statements a certification by a person duly authorized by the Applicant to make the certification that the person has responsibility for the financial statements and that to the best knowledge of the person making the certification the financial statements fairly present, in all material respects, the Applicant's financial condition, results of operations, and cash flows for the period presented.

An NRSRO is not required to make this Exhibit publicly available on its Web site, or through another comparable, readily accessible means pursuant to Exchange Act Rule 17g–1(i). An NRSRO may request that the Commission keep this Exhibit confidential by marking each page ''Confidential Treatment'' and complying with Commission rules governing confidential treatment (*See* 17 CFR 200.80 and 17 CFR 200.83). The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law.

Exhibit 12. Provide in this Exhibit the following information, as applicable, and which is not required to be audited, regarding the Applicant's aggregate revenues for the fiscal or calendar year ending immediately before the date of the initial application:

• Revenue from determining and maintaining credit ratings;

• Revenue from subscribers;

• Revenue from granting licenses or rights to publish credit ratings; and

• Revenue from all other services and products offered by your credit rating organization (include descriptions of any major sources of revenue).

An NRSRO is not required to make this Exhibit publicly available on its Web site or, through another comparable, readily accessible means pursuant to Exchange Act Rule 17g–1(i). An NRSRO may request that the Commission keep this Exhibit confidential by marking each page ''Confidential Treatment'' and complying with Commission rules governing confidential treatment (*See* 17 CFR 200.80 and 17 CFR 200.83). The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law.

Exhibit 13. Provide in this Exhibit the approximate total and median annual compensation of the Applicant's credit analysts for the fiscal or calendar year ending immediately before the date of this initial application. In calculating total and median annual compensation, the Applicant may exclude deferred compensation, provided such exclusion is noted in the Exhibit.

An NRSRO is not required to make this Exhibit publicly available on its

Web site, or through another comparable, readily accessible means pursuant to Exchange Act Rule 17g–1(i). An NRSRO may request that the Commission keep this Exhibit confidential by marking each page ''Confidential Treatment'' and complying with Commission rules governing confidential treatment (*See* 17 CFR 200.80 and 17 CFR 200.83). The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law.

F. Explanation of Terms

1. COMMISSION—The U. S. Securities and Exchange Commission.

2. CREDIT RATING [Section 3(a)(60) of the Exchange Act]—An assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments.

3. CREDIT RATING AGENCY [Section 3(a)(61) of the Exchange Act]—Any person:

- Engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee, but does not include a commercial credit reporting company;
- Employing either a quantitative or qualitative model, or both to determine credit ratings; and
- Receiving fees from either issuers, investors, other market participants, or a combination thereof.

4. NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION [Section 3(a)(62) of the Exchange Act]—A credit rating agency that:

- Has been in business as a credit rating agency for at least the 3 consecutive years immediately preceding the date of its application for registration as an NRSRO;
- Issues credit ratings certified by qualified institutional buyers in accordance with section 15(a)(1)(B)(ix) of the Exchange Act with respect to:
  - ○ Financial institutions, brokers, or dealers;
  - ○ Insurance companies;
  - ○ Corporate issuers;
  - ○ Issuers of asset-backed securities;
  - ○ Issuers of government securities, municipal securities, or securities issued by a foreign government; or
  - ○ A combination of one or more of the above; and
- Is registered as an NRSRO.

6. PERSON—An individual, partnership, corporation, trust, company, limited liability company, or other organization (including a separately identifiable department or division).

7. PERSON WITHIN AN APPLICANT/NRSRO—The person furnishing Form NRSRO identified in Item 1, any credit rating affiliates identified in Item 3, and any partner, officer, director, branch manager, or employee of the person or the credit rating affiliates (or any person occupying a similar status or performing similar functions).

8. SEPARATELY IDENTIFIABLE DEPARTMENT OR DIVISION—A unit of a corporation or company:

- That is under the direct supervision of an officer or officers designated by the board of directors of the corporation as responsible for the day-to-day conduct of the corporation's credit rating activities for one or more affiliates, including the supervision of all employees engaged in the performance of such activities; and
- For which all of the records relating to its credit rating activities are separately created or maintained in or extractable from such unit's own facilities or the facilities of the corporation, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement by the Commission of the Exchange Act and rules and regulations promulgated thereunder.

8. QUALIFIED INSTITUTIONAL BUYER [Section 3(a)(64) of the Exchange Act]—An entity listed in 17 CFR 230.144A(a) that is not affiliated with the credit rating agency.

Disclosure Reporting Page (NRSRO)

This Disclosure Reporting Page (DRP) is to be used to provide information concerning affirmative responses to Item 8 of Form NRSRO.

Submit a separate DRP for each person that: (a) Has committed or omitted any act, or been subject to an order or finding, enumerated in subparagraphs (A), (D), (E), (G), or (H) of section 15(b)(4) of the Securities Exchange Act of 1934, has been convicted of any offense specified in section 15(b)(4)(B) of the Securities Exchange Act of 1934, or has been enjoined from any action, conduct, or practice specified in section 15(b)(4)(C) of the Securities Exchange Act of 1934; (b) has been convicted of any crime that is punishable by imprisonment for 1 or more years, and that is not described in section 15(b)(4) of the Securities Exchange Act of 1934, or has been convicted of a substantially equivalent crime by a foreign court of competent jurisdiction; or (c) is subject to any order of the Commission barring or suspending the right of the person to be associated with an NRSRO.

Name of Applicant/NRSRO

_____

Date

_____

Check Item being responded to:

☐ Item 8A
☐ Item 8B
☐ Item 8C

Full name of the person for whom this DRP is being submitted:

_____

If this DRP provides information relating to a ''Yes'' answer to Item 8A, describe the act(s) that was (were) committed or omitted; or the order(s) or finding(s); or the injunction(s) (provide the relevant statute(s) or regulation(s)) and provide jurisdiction(s) and date(s):

_____

If this DRP provides information relating to a ''Yes'' answer to Item 8B, describe the crime(s) and provide jurisdiction(s) and date(s):

_____

If this DRP provides information relating to a ''Yes'' answer to Item 8C, attach the relevant Commission order(s) and provide the date(s):

_____

By the Commission.
Dated: June 5, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–11166 Filed 6–15–07; 8:45 am]

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H.R. 414/P.L. 110–29

To designate the facility of the United States Postal Service located at 60 Calle McKinley, West in Mayaguez, Puerto Rico, as the "Miguel Angel García Méndez Post Office Building". (June 1, 2007; 121 Stat. 219)

H.R. 437/P.L. 110–30

To designate the facility of the United States Postal Service located at 500 West Eisenhower Street in Rio Grande City, Texas, as the "Lino Perez, Jr. Post Office". (June 1, 2007; 121 Stat. 220)

H.R. 625/P.L. 110–31

To designate the facility of the United States Postal Service located at 4230 Maine Avenue in Baldwin Park, California, as the "Atanacio Haro-Marin Post Office". (June 1, 2007; 121 Stat. 221)

H.R. 1402/P.L. 110–32

To designate the facility of the United States Postal Service located at 320 South Lecanto Highway in Lecanto, Florida, as the "Sergeant Dennis J. Flanagan Lecanto Post Office Building". (June 1, 2007; 121 Stat. 222)

H.R. 2080/P.L. 110–33

To amend the District of Columbia Home Rule Act to conform the District charter to revisions made by the Council of the District of Columbia relating to public education. (June 1, 2007; 121 Stat. 223)

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6	(869–062–00008–1)	10.50	Jan. 1, 2007
7 Parts:			
1–26	(869–062–00009–0)	44.00	Jan. 1, 2007
27–52	(869–062–00010–3)	49.00	Jan. 1, 2007
53–209	(869–062–00011–1)	37.00	Jan. 1, 2007
210–299	(869–062–00012–0)	62.00	Jan. 1, 2007
300–399	(869–062–00013–8)	46.00	Jan. 1, 2007
400–699	(869–062–00014–6)	42.00	Jan. 1, 2007
700–899	(869–062–00015–4)	43.00	Jan. 1, 2007
900–999	(869–062–00016–2)	60.00	Jan. 1, 2007
1000–1199	(869–062–00017–1)	22.00	Jan. 1, 2007
1200–1599	(869–062–00018–9)	61.00	Jan. 1, 2007
1600–1899	(869–062–00019–7)	64.00	Jan. 1, 2007
1900–1939	(869–062–00020–1)	31.00	Jan. 1, 2007
1940–1949	(869–062–00021–9)	50.00	[5] Jan. 1, 2007
1950–1999	(869–062–00022–7)	46.00	Jan. 1, 2007
2000–End	(869–062–00023–5)	50.00	Jan. 1, 2007
8	(869–062–00024–3)	63.00	Jan. 1, 2007
9 Parts:			
1–199	(869–062–00025–1)	61.00	Jan. 1, 2007
200–End	(869–062–00026–0)	58.00	Jan. 1, 2007
10 Parts:			
1–50	(869–062–00027–8)	61.00	Jan. 1, 2007
51–199	(869–062–00028–6)	58.00	Jan. 1, 2007
200–499	(869–062–00029–4)	46.00	Jan. 1, 2007
500–End	(869–066–00030–8)	62.00	Jan. 1, 2007
11	(869–062–00031–6)	41.00	Jan. 1, 2007
12 Parts:			
1–199	(869–062–00032–4)	34.00	Jan. 1, 2007
200–219	(869–062–00033–2)	37.00	Jan. 1, 2007
220–299	(869–062–00034–1)	61.00	Jan. 1, 2007
300–499	(869–062–00035–9)	47.00	Jan. 1, 2007
500–599	(869–062–00036–7)	39.00	Jan. 1, 2007
600–899	(869–062–00037–5)	56.00	Jan. 1, 2007
900–End	(869–062–00038–3)	50.00	Jan. 1, 2007
13	(869–062–00039–1)	55.00	Jan. 1, 2007
14 Parts:			
1–59	(869–062–00040–5)	63.00	Jan. 1, 2007
60–139	(869–062–00041–3)	61.00	Jan. 1, 2007
140–199	(869–062–00042–1)	30.00	Jan. 1, 2007
200–1199	(869–062–00043–0)	50.00	Jan. 1, 2007
1200–End	(869–062–00044–8)	45.00	Jan. 1, 2007
15 Parts:			
0–299	(869–062–00045–6)	40.00	Jan. 1, 2007
300–799	(869–062–00046–4)	60.00	Jan. 1, 2007
800–End	(869–062–00047–2)	42.00	Jan. 1, 2007
16 Parts:			
0–999	(869–062–00048–1)	50.00	Jan. 1, 2007
1000–End	(869–062–00049–9)	60.00	Jan. 1, 2007
17 Parts:			
1–199	(869–062–00051–1)	50.00	Apr. 1, 2007
200–239	(869–060–00052–6)	60.00	Apr. 1, 2006
240–End	(869–060–00053–4)	62.00	Apr. 1, 2006
18 Parts:			
1–399	(869–060–00054–2)	62.00	Apr. 1, 2006
400–End	(869–062–00055–3)	26.00	Apr. 1, 2007
19 Parts:			
1–140	(869–060–00056–9)	61.00	Apr. 1, 2006
141–199	(869–060–00057–7)	58.00	Apr. 1, 2006
*200–End	(869–062–00058–8)	31.00	Apr. 1, 2007
20 Parts:			
1–399	(869–060–00059–3)	50.00	Apr. 1, 2006
400–499	(869–060–00060–7)	64.00	Apr. 1, 2006
500–End	(869–060–00061–5)	63.00	Apr. 1, 2006
21 Parts:			
1–99	(869–062–00062–6)	40.00	Apr. 1, 2007
100–169	(869–060–00063–1)	49.00	Apr. 1, 2006
170–199	(869–062–00064–2)	50.00	Apr. 1, 2007
200–299	(869–062–00065–1)	17.00	Apr. 1, 2007
*300–499	(869–062–00066–9)	30.00	Apr. 1, 2007
500–599	(869–060–00067–4)	47.00	Apr. 1, 2006
600–799	(869–062–00068–5)	17.00	Apr. 1, 2007
800–1299	(869–060–00069–1)	60.00	Apr. 1, 2006
1300–End	(869–060–00070–4)	25.00	Apr. 1, 2006
22 Parts:			
1–299	(869–060–00071–2)	63.00	Apr. 1, 2006
300–End	(869–060–00072–1)	45.00	[7] Apr. 1, 2006
23	(869–062–00073–7)	45.00	Apr. 1, 2007
24 Parts:			
0–199	(869–060–00074–7)	60.00	Apr. 1, 2006
200–499	(869–060–00075–5)	50.00	Apr. 1, 2006
500–699	(869–060–00076–3)	30.00	Apr. 1, 2006
700–1699	(869–060–00077–1)	61.00	Apr. 1, 2006
1700–End	(869–062–00078–2)	30.00	Apr. 1, 2007
25	(869–060–00079–8)	64.00	Apr. 1, 2006
26 Parts:			
§§ 1.0–1–1.60	(869–062–00080–4)	49.00	Apr. 1, 2007
§§ 1.61–1.169	(869–060–00081–0)	63.00	Apr. 1, 2006
§§ 1.170–1.300	(869–060–00082–8)	60.00	Apr. 1, 2006
§§ 1.301–1.400	(869–060–00083–6)	47.00	Apr. 1, 2006
§§ 1.401–1.440	(869–062–00084–7)	56.00	Apr. 1, 2007
§§ 1.441–1.500	(869–060–00085–2)	58.00	Apr. 1, 2006
§§ 1.501–1.640	(869–062–00086–3)	49.00	Apr. 1, 2007
§§ 1.641–1.850	(869–060–00087–9)	61.00	Apr. 1, 2006
§§ 1.851–1.907	(869–062–00088–0)	61.00	Apr. 1, 2007
§§ 1.908–1.1000	(869–062–00089–8)	60.00	Apr. 1, 2007
§§ 1.1001–1.1400	(869–060–00090–9)	61.00	Apr. 1, 2006
§§ 1.1401–1.1550	(869–060–00091–2)	58.00	Apr. 1, 2006
§§ 1.1551–End	(869–060–00092–5)	50.00	Apr. 1, 2006
2–29	(869–062–00093–6)	60.00	Apr. 1, 2007
30–39	(869–060–00094–1)	41.00	Apr. 1, 2006
40–49	(869–062–00095–2)	28.00	Apr. 1, 2007
50–299	(869–062–00096–1)	42.00	Apr. 1, 2007

Title	Stock Number	Price	Revision Date
300–499	(869–060–00097–6)	61.00	Apr. 1, 2006
500–599	(869–062–00098–7)	12.00	[6] Apr. 1, 2007
600–End	(869–062–00099–5)	17.00	Apr. 1, 2007
27 Parts:			
1–399	(869–060–00100–0)	64.00	Apr. 1, 2006
400–End	(869–062–00102–9)	18.00	Apr. 1, 2007
28 Parts:			
0–42	(869–060–00102–6)	61.00	July 1, 2006
43–End	(869–060–00103–4)	60.00	July 1, 2006
29 Parts:			
0–99	(869–060–00104–2)	50.00	July 1, 2006
100–499	(869–060–00105–1)	23.00	July 1, 2006
500–899	(869–060–00106–9)	61.00	July 1, 2006
900–1899	(869–060–00107–7)	36.00	July 1, 2006
1900–1910 (§§ 1900 to 1910.999)	(869–060–00108–5)	61.00	July 1, 2006
1910 (§§ 1910.1000 to end)	(869–060–00109–3)	46.00	July 1, 2006
1911–1925	(869–060–00110–7)	30.00	July 1, 2006
1926	(869–060–00111–5)	50.00	July 1, 2006
1927–End	(869–060–00112–3)	62.00	July 1, 2006
30 Parts:			
1–199	(869–060–00113–1)	57.00	July 1, 2006
200–699	(869–060–00114–0)	50.00	July 1, 2006
700–End	(869–060–00115–8)	58.00	July 1, 2006
31 Parts:			
0–199	(869–060–00116–6)	41.00	July 1, 2006
200–499	(869–060–00117–4)	46.00	July 1, 2006
500–End	(869–060–00118–2)	62.00	July 1, 2006
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–060–00119–1)	61.00	July 1, 2006
191–399	(869–060–00120–4)	63.00	July 1, 2006
400–629	(869–060–00121–2)	50.00	July 1, 2006
630–699	(869–060–00122–1)	37.00	July 1, 2006
700–799	(869–060–00123–9)	46.00	July 1, 2006
800–End	(869–060–00124–7)	47.00	July 1, 2006
33 Parts:			
1–124	(869–060–00125–5)	57.00	July 1, 2006
125–199	(869–060–00126–3)	61.00	July 1, 2006
200–End	(869–060–00127–1)	57.00	July 1, 2006
34 Parts:			
1–299	(869–060–00128–0)	50.00	July 1, 2006
300–399	(869–060–00129–8)	40.00	July 1, 2006
400–End & 35	(869–060–00130–1)	61.00	[8] July 1, 2006
36 Parts:			
1–199	(869–060–00131–0)	37.00	July 1, 2006
200–299	(869–060–00132–8)	37.00	July 1, 2006
300–End	(869–060–00133–6)	61.00	July 1, 2006
37	(869–060–00134–4)	58.00	July 1, 2006
38 Parts:			
0–17	(869–060–00135–2)	60.00	July 1, 2006
18–End	(869–060–00136–1)	62.00	July 1, 2006
39	(869–060–00137–9)	42.00	July 1, 2006
40 Parts:			
1–49	(869–060–00138–7)	60.00	July 1, 2006
50–51	(869–060–00139–5)	45.00	July 1, 2006
52 (52.01–52.1018)	(869–060–00140–9)	60.00	July 1, 2006
52 (52.1019–End)	(869–060–00141–7)	61.00	July 1, 2006
53–59	(869–060–00142–5)	31.00	July 1, 2006
60 (60.1–End)	(869–060–00143–3)	58.00	July 1, 2006
60 (Apps)	(869–060–00144–7)	57.00	July 1, 2006
61–62	(869–060–00145–0)	45.00	July 1, 2006
63 (63.1–63.599)	(869–060–00146–8)	58.00	July 1, 2006
63 (63.600–63.1199)	(869–060–00147–6)	50.00	July 1, 2006
63 (63.1200–63.1439)	(869–060–00148–4)	50.00	July 1, 2006
63 (63.1440–63.6175)	(869–060–00149–2)	32.00	July 1, 2006
63 (63.6580–63.8830)	(869–060–00150–6)	32.00	July 1, 2006
63 (63.8980–End)	(869–060–00151–4)	35.00	July 1, 2006
64–71	(869–060–00152–2)	29.00	July 1, 2006
72–80	(869–060–00153–1)	62.00	July 1, 2006
81–85	(869–060–00154–9)	60.00	July 1, 2006
86 (86.1–86.599–99)	(869–060–00155–7)	58.00	July 1, 2006
86 (86.600–1–End)	(869–060–00156–5)	50.00	July 1, 2006
87–99	(869–060–00157–3)	60.00	July 1, 2006
100–135	(869–060–00158–1)	45.00	July 1, 2006
136–149	(869–060–00159–0)	61.00	July 1, 2006
150–189	(869–060–00160–3)	50.00	July 1, 2006
190–259	(869–060–00161–1)	39.00	July 1, 2006
260–265	(869–060–00162–0)	50.00	July 1, 2006
266–299	(869–060–00163–8)	50.00	July 1, 2006
300–399	(869–060–00164–6)	42.00	July 1, 2006
400–424	(869–060–00165–4)	56.00	July 1, 2006
425–699	(869–060–00166–2)	61.00	July 1, 2006
700–789	(869–060–00167–1)	61.00	July 1, 2006
790–End	(869–060–00168–9)	61.00	July 1, 2006
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–060–00169–7)	24.00	July 1, 2006
101	(869–060–00170–1)	21.00	[8] July 1, 2006
102–200	(869–060–00171–9)	56.00	July 1, 2006
201–End	(869–060–00172–7)	24.00	July 1, 2006
42 Parts:			
1–399	(869–060–00173–5)	61.00	Oct. 1, 2006
400–413	(869–060–00174–3)	32.00	Oct. 1, 2006
414–429	(869–060–00175–1)	32.00	Oct. 1, 2006
430–End	(869–060–00176–0)	64.00	Oct. 1, 2006
43 Parts:			
1–999	(869–060–00177–8)	56.00	Oct. 1, 2006
1000–end	(869–060–00178–6)	62.00	Oct. 1, 2006
44	(869–060–00179–4)	50.00	Oct. 1, 2006
45 Parts:			
1–199	(869–060–00180–8)	60.00	Oct. 1, 2006
200–499	(869–060–00181–6)	34.00	Oct. 1, 2006
500–1199	(869–060–00182–4)	56.00	Oct. 1, 2006
1200–End	(869–060–00183–2)	61.00	Oct. 1, 2006
46 Parts:			
1–40	(869–060–00184–1)	46.00	Oct. 1, 2006
41–69	(869–060–00185–9)	39.00	Oct. 1, 2006
70–89	(869–060–00186–7)	14.00	Oct. 1, 2006
90–139	(869–060–00187–5)	44.00	Oct. 1, 2006
140–155	(869–060–00188–3)	25.00	Oct. 1, 2006
156–165	(869–060–00189–1)	34.00	Oct. 1, 2006
166–199	(869–060–00190–5)	46.00	Oct. 1, 2006
200–499	(869–060–00191–3)	40.00	Oct. 1, 2006
500–End	(869–060–00192–1)	25.00	Oct. 1, 2006
47 Parts:			
0–19	(869–060–00193–0)	61.00	Oct. 1, 2006
20–39	(869–060–00194–8)	46.00	Oct. 1, 2006
40–69	(869–060–00195–6)	40.00	Oct. 1, 2006
70–79	(869–060–00196–4)	61.00	Oct. 1, 2006
80–End	(869–060–00197–2)	61.00	Oct. 1, 2006
48 Chapters:			
1 (Parts 1–51)	(869–060–00198–1)	63.00	Oct. 1, 2006
1 (Parts 52–99)	(869–060–00199–9)	49.00	Oct. 1, 2006
2 (Parts 201–299)	(869–060–00200–6)	50.00	Oct. 1, 2006
3–6	(869–060–00201–4)	34.00	Oct. 1, 2006
7–14	(869–060–00202–2)	56.00	Oct. 1, 2006

Title	Stock Number	Price	Revision Date
15–28	(869–060–00203–1)	47.00	Oct. 1, 2006
29–End	(869–060–00204–9)	47.00	Oct. 1, 2006
49 Parts:			
1–99	(869–060–00205–7)	60.00	Oct. 1, 2006
100–185	(869–060–00206–5)	63.00	Oct. 1, 2006
186–199	(869–060–00207–3)	23.00	Oct. 1, 2006
200–299	(869–060–00208–1)	32.00	Oct. 1, 2006
300–399	(869–060–00209–0)	32.00	Oct. 1, 2006
400–599	(869–060–00210–3)	64.00	Oct. 1, 2006
600–999	(869–060–00211–1)	19.00	Oct. 1, 2006
1000–1199	(869–060–00212–0)	28.00	Oct. 1, 2006
1200–End	(869–060–00213–8)	34.00	Oct. 1, 2006
50 Parts:			
1–16	(869–060–00214–6)	11.00	[9] Oct. 1, 2006
17.1–17.95(b)	(869–060–00215–4)	32.00	Oct. 1, 2006
17.95(c)–end	(869–060–00216–2)	32.00	Oct. 1, 2006
17.96–17.99(h)	(869–060–00217–1)	61.00	Oct. 1, 2006
17.99(i)–end and 17.100–end	(869–060–00218–9)	47.00	[9] Oct. 1, 2006
18–199	(869–060–00219–7)	50.00	Oct. 1, 2006
200–599	(869–060–00220–1)	45.00	Oct. 1, 2006
600–659	(869–060–00221–9)	31.00	Oct. 1, 2006
660–End	(869–060–00222–7)	31.00	Oct. 1, 2006
CFR Index and Findings Aids	(869–062–00050–2)	62.00	Jan. 1, 2007
Complete 2007 CFR set		1,389.00	2007
Microfiche CFR Edition:			
Subscription (mailed as issued)		332.00	2007
Individual copies		4.00	2007
Complete set (one-time mailing)		332.00	2006
Complete set (one-time mailing)		325.00	2005

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 2006, through January 1, 2007. The CFR volume issued as of January 6, 2006 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2005 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2006. The CFR volume issued as of October 1, 2005 should be retained.